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# *Committee Meeting*

of

## NEW JERSEY LEGISLATIVE SELECT OVERSIGHT COMMITTEE

*“The Committee will take testimony from invited guests”*

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**LOCATION:** Committee Room 4  
State House Annex  
Trenton, New Jersey

**DATE:** January 8, 2019  
10:30 a.m.

### **MEMBERS OF COMMITTEE PRESENT:**

Senator Loretta Weinberg, Co-Chair  
Assemblywoman Eliana Pintor Marin, Co-Chair  
Senator Kristin M. Corrado, Co-Vice Chair  
Assemblywoman Nancy F. Muñoz, Co-Vice Chair  
Senator Sandra B. Cunningham  
Senator Fred H. Madden, Jr.  
Senator M. Teresa Ruiz  
Senator Steven V. Oroho  
Assemblyman Gordon M. Johnson  
Assemblywoman Pamela R. Lampitt  
Assemblywoman Angela V. McKnight  
Assemblywoman Nancy J. Pinkin  
Assemblywoman Verlina Reynolds-Jackson  
Assemblywoman BettyLou DeCroce  
Assemblywoman Holly T. Schepisi



### **ALSO PRESENT:**

Rosemary Alito, Esq.  
Michael Critchley, Sr., Esq.  
Joseph A. Hayden, Jr., Esq.  
*Special Counsels*

Stephanie M. Wozunk  
*Office of Legislative Services  
Committee Aide*

Alison Accettola  
*Senate Majority  
Brian Quigley  
Assembly Majority  
Committee Aides*

Michael R. Molimock  
*Senate Republican  
Kevin Logan  
Assembly Republican  
Committee Aides*

***Meeting Recorded and Transcribed by  
The Office of Legislative Services, Public Information Office,  
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey***

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LORETTA WEINBERG  
Co-Chairwoman  
ELIANA PINTOR MARIN  
Co-Chairwoman

KRISTIN M. CORRADO  
Co-Vice Chairwoman  
NANCY F. MUNOZ  
Co-Vice Chairwoman

SANDRA B. CUNNINGHAM  
FRED H. MADDEN JR.  
M. TERESA RUIZ  
STEVEN V. OROHO

GORDON M. JOHNSON  
PAMELA R. LAMPITT  
ANGELA V. MCKNIGHT  
NANCY J. PINKIN  
VERLINA REYNOLDS-JACKSON  
BETTYYLOU DECROCE  
HOLLY T. SCHEPISI



**New Jersey State Legislature**  
**NEW JERSEY LEGISLATIVE SELECT OVERSIGHT**  
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**COMMITTEE NOTICE**

**TO:** MEMBERS OF THE NEW JERSEY LEGISLATIVE SELECT OVERSIGHT COMMITTEE

**FROM:** SENATOR LORETTA WEINBERG, CO-CHAIR, AND ASSEMBLYWOMAN ELIANA PINTOR MARIN, CO-CHAIR

**SUBJECT:** COMMITTEE MEETING - JANUARY 8, 2019

*The public may address comments and questions to Stephanie M. Wozunk, Committee Aide, or make bill status and scheduling inquiries to Kristi L. Cannella, Secretary, at (609)847-3890, fax (609)777-2998 or e-mail: OLSAideLSOC@njleg.org. Written and electronic comments, questions and testimony submitted to the committee by the public, as well as recordings and transcripts, if any, of oral testimony, are government records and will be available to the public upon request.*

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**The New Jersey Legislative Select Oversight Committee will meet on Tuesday, January 8, 2019, at 10:30 AM in Committee Room 4, 1st Floor, State House Annex, Trenton, New Jersey.**

**The committee will take testimony from invited guests.**

Issued 1/3/19

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**SENATOR LORETTA WEINBERG (Co-Chair):** Good morning, everyone.

Welcome back to Trenton, 2019.

It does, almost, feel like it's a year since we first got together; but it's not. So I just want to take a moment to wish everybody on the Committee, everybody in the audience, and all the press who is here a happy and, hopefully, a healthy and peaceful new year for all of us.

So right now I will turn it over to our Co-Chair, Assemblywoman Pintor Marin.

**ASSEMBLYWOMAN ELIANA PINTOR MARIN (Co-Chair):** Good morning, everyone.

If we could please have roll call for today's attendance.

MS. WOZUNK (Committee Aide): Assemblywoman Schepisi.

ASSEMBLYWOMAN SCHEPISI: Here.

MS. WOZUNK: Assemblywoman DeCroce.

ASSEMBLYWOMAN DeCROCE: Here.

MS. WOZUNK: Assemblywoman Reynolds-Jackson.

ASSEMBLYWOMAN REYNOLDS-JACKSON: Here.

MS. WOZUNK: Assemblywoman Pinkin.

ASSEMBLYWOMAN PINKIN: Present.

MS. WOZUNK: Assemblywoman McKnight.

ASSEMBLYWOMAN McKNIGHT: Here.

MS. WOZUNK: Assemblywoman Lampitt.

ASSEMBLYWOMAN PINTOR MARIN: She's on her way.

MS. WOZUNK: Assemblyman Johnson.

ASSEMBLYMAN JOHNSON: Here.

MS. WOZUNK: Senator Oroho.

SENATOR OROHO: Here.

MS. WOZUNK: Senator Ruiz.

SENATOR RUIZ: Here.

MS. WOZUNK: Senator Madden.

SENATOR MADDEN: Here.

MS. WOZUNK: Senator Cunningham.

SENATOR CUNNINGHAM: Here.

MS. WOZUNK: Co-Vice Chair Muñoz. (no response)

Co-Vice Chair Corrado.

**SENATOR KRISTIN M. CORRADO (Co-Vice Chair):**

Here.

MS. WOZUNK: Co-Chair Pintor Marin.

ASSEMBLYWOMAN PINTOR MARIN: Here.

MS. WOZUNK: Co-Chair Weinberg.

SENATOR WEINBERG: Here.

MS. WOZUNK: We have a quorum.

ASSEMBLYWOMAN PINTOR MARIN: Thank you very much.

Thank you to Mr. Parimal Garg; good morning to you.

**P A R I M A L G A R G, Esq.:** Good morning.

ASSEMBLYWOMAN PINTOR MARIN: Would you like to, for the record, state your name and who's here present with you before we start the swearing-in process?

MR. GARG: Hi, my name is Parimal Garg.

**C H R I S T O P H E R S. P O R R I N O, Esq.:** Accompanying him are his counsels, Chris Porrino and Matt Boxer.

MS. WOZUNK: Good morning, Parimal.

Your testimony is being recorded so that it may be transcribed for the Committee and may be used in other proceedings. Do you understand that?

MR. GARG: I do.

MS. WOZUNK: Please know all of your responses should be verbal; we cannot record a head shake or a nod. If you do not understand a question, please ask for clarification. Otherwise, the Committee will assume that you understand the question, and that your answers are responsive to that question.

Do you understand those directions?

MR. GARG: I do.

MS. WOZUNK: Do you understand that if the statements you make today are willfully false, if you fail to answer a pertinent question or commit perjury, you may be subject to penalties under the law?

MR. GARG: I do.

MS. WOZUNK: Do you understand that you have certain rights under the Code of Fair Procedure, including the right to have your Counsel submit proposed questions on your behalf?

MR. GARG: I do.

MS. WOZUNK: Does your Counsel have any questions to submit today?

MR. PORRINO: We don't.

MS. WOZUNK: You are entitled to a copy of the transcript of your testimony, at your expense, when such copy is available.

Do you understand that?

MR. GARG: Yes.

MS. WOZUNK: You have the right to file a brief, sworn statement relevant to your testimony, for the record, at the conclusion of your appearance today.

Do you understand that?

MR. GARG: I do.

MS. WOZUNK: Before the Committee proceeds with the oath, do you have any questions?

MR. GARG: I do not.

ASSEMBLYWOMAN PINTOR MARIN: Good morning, Mr. Parimal, once again.

If you would please stand to take the oath.

(Assemblywoman Pintor Marin administers oath)

Please be seated; and once again, state your name for the record.

MR. GARG: Parimal Garg.

ASSEMBLYWOMAN PINTOR MARIN: Mr. Garg, it is our understanding that you have an opening statement, correct?

MR. GARG: That's correct.

ASSEMBLYWOMAN PINTOR MARIN: You can begin.

MR. GARG: Thank you, Chairwoman.

ASSEMBLYWOMAN PINTOR MARIN: Thank you.

MR. GARG: My name is Parimal Garg, and I serve as Deputy Chief Counsel to Governor Phil Murphy.

Katie Brennan has been a personal friend of mine for over two years. We first got to know each other in connection with the New Leaders Council, and then later during Katie's role as a Policy volunteer for the Murphy Campaign, and her position as Chief of Staff for the Housing and Mortgage Finance Agency.

I admire and respect her bravery.

On January 16, 2018, I was attending the Inaugural Ball for Governor Murphy. Katie was also in attendance, and during the evening she pulled me aside. She said she needed to talk to me about a matter of serious wrongdoing by a senior Administration official. She said she wanted to tell me more, but we needed to be somewhere more private. We agreed to find a time to talk over the phone later that week.

The next day, I told my supervisor, Matt Platkin, who was the Chief Counsel to the Governor, about my conversation with Katie. Matt and I both knew Katie, and I told him that Katie wanted to discuss a matter of serious wrongdoing. We did not know what she wanted to discuss.

Two days later, on Friday evening, I spoke with Katie on the phone. Before we got into the substance of what she wanted to talk about, I explained to Katie that while I was a lawyer and her friend, I was not *her* lawyer. And so the conversation between us would not be privileged and that, depending on what she told me, I might not be able to keep it confidential.



She said she appreciated the advice. She said she had been thinking about the situation over the past few days, and she had decided that she did not want to speak to me further about the issue at that time. I respected her wishes.

I later informed Matt Platkin that Katie had decided not to share any information with me.

About two months later, on March 18, 2018, Katie called me and said she wanted to speak to me about the matter she had mentioned previously. She said she wanted to tell me in person, and not on the phone. We then set up a time to meet on March 22 after work.

On March 19, before I met with Katie, I told Matt Platkin that Katie wanted to speak to me about that same topic from January. Neither of us knew what she wanted to tell me.

On March 22, I met with Katie. I reminded her that I might not be able to keep things confidential, and I specifically told her that I might have to tell Matt Platkin. She said she had spoken to Matt earlier that week, and that she understood that her allegations were going to be looked into and handled.

Katie said that even though she already spoke to Matt, she wanted to tell me anyway. Katie then told me that she had been raped by Al Alvarez.

I was shocked. I was heartbroken for my friend, and I offered her my support.

The next day I spoke to Matt Platkin. Matt said that he had already relayed Katie's allegation to Heather Taylor, the Chief Ethics

Officer in the Governor's Office. Matt said there was nothing more for me to do.

In the nine months since, I have seen Katie on numerous occasions, both professionally and socially; but she has never directly or indirectly referred again to what happened to her in April 2017.

As I told her in March, I think it is very brave of her to come forward.

I sincerely hope that we will use this moment to come up with reforms that will make things better for survivors of sexual assault.

Thank you, and I am happy to answer any of your questions.

MR. CRITCHLEY (Committee Special Counsel): Good morning, Mr. Garg.

MR. GARG: Good morning.

MR. CRITCHLEY: Counsel, good morning.

MR. PORRINO: Good morning.

MR. CRITCHLEY: Mr. Garg, just for the record, would you please give us the benefit of your educational background?

MR. GARG: Sure.

So I attended public schools down the road in Lawrence Township. I did my undergraduate studies at Georgetown University, and then I attended Harvard Law School.

MR. CRITCHLEY: And could you give us a brief outline of your work experience post-law school?

MR. GARG: After graduating from law school, I worked as the Litigation Associate in the Washington, D.C. office of Paul, Weiss, Rifkind, Wharton & Garrison. Following that, I worked as a law clerk for Chief

Justice Stuart Rabner of the New Jersey Supreme Court, and then I joined the Murphy for Governor Campaign in August 2016 as a Senior Policy Advisor.

MR. CRITCHLEY: In your experience in the law, have you had occasion to deal with matters involving employment law-related matters?

MR. GARG: That was not what I did at Paul Weiss; no.

MR. CRITCHLEY: And you started in the Campaign when?

MR. GARG: August 2016.

MR. CRITCHLEY: And what role did you have in the Campaign?

MR. GARG: I was the Senior Policy Advisor.

MR. CRITCHLEY: And what did that include, please?

MR. GARG: So I reported directly to the Policy Director on the Campaign, Matt Platkin. And the role of the Campaign's policy team was to formulate the Campaign's substantive positions on a number of issues that the Campaign had to address.

MR. CRITCHLEY: How did it come about that you became involved in the Campaign?

MR. GARG: So Matt Platkin and I had known each other prior to the Campaign, and Matt had known that I was interested in working for then-candidate Murphy.

MR. CRITCHLEY: And how long -- when you say, *Matt*, you mean Matt Platkin, correct?

MR. GARG: Correct.

MR. CRITCHLEY: And how long had you known Matt Platkin prior to August of 2016?

MR. GARG: I was first introduced to Matt sometime in 2014.

MR. CRITCHLEY: And how were you introduced to him?

MR. GARG: Through mutual friends.

MR. CRITCHLEY: Is this in connection with the New Leaders Council?

MR. GARG: No, it was not.

MR. CRITCHLEY: Okay. And did you maintain a relationship with Matt Platkin between 2014 and 2016?

MR. GARG: Yes, that's correct.

MR. CRITCHLEY: And you said you have known Katie Brennan for approximately two years.

MR. GARG: That's correct.

MR. CRITCHLEY: And you met her initially in connection with the New Leaders Council?

MR. GARG: I met her before I became involved with the New Leaders Council. I think the first time I met her was in the summer of 2016 at a social event.

MR. CRITCHLEY: And how did you come about meeting her?

MR. GARG: So it was at a social event; I think it was a Young Democrats event. I don't remember where exactly it was.

MR. CRITCHLEY: Okay; what is the New Leaders Council?

MR. GARG: The New Leaders Council is a nonprofit that is designed to train the next generation of progressive leaders. So Katie is the current Chapter Director of the New Leaders Council for New Jersey.

MR. CRITCHLEY: And do you know Al Alvarez?

MR. GARG: I do.

MR. CRITCHLEY: How did you come about to know Al Alvarez?

MR. GARG: I first met Al when I was working on the Murphy for Governor Campaign.

MR. CRITCHLEY: And when was that? I know you said you started in August of 2016. Now my next question, point of reference, using that timeframe, when did you meet Al Alvarez?

MR. GARG: I probably met Al the first day I worked on the Campaign.

MR. CRITCHLEY: And what was Mr. Alvarez's role in the Campaign when you first met him?

MR. GARG: He was the Director of Latino and Muslim Outreach.

MR. CRITCHLEY: Did you know that he had a relationship with the Campaign prior to meeting him in August of 2016?

MR. GARG: I'm sorry, I don't understand the question.

MR. CRITCHLEY: Well, did you know Mr. Alvarez's relationship with Governor Murphy prior to August of 2016?

MR. GARG: I think I might have seen his name in one or two news articles; but I had never met him before.

MR. CRITCHLEY: Okay. And the conversation that you had with Ms. Brennan, you said that occurred March 22, 2018, correct?

MR. GARG: Yes, that's correct.

MR. CRITCHLEY: And I just received a copy of your statement. If you don't mind, can we just go over a couple of comments you made in the statement?

MR. GARG: Sure.

MR. CRITCHLEY: And we'll go along as we--

Now you say your role is Deputy Chief Counsel; and I know everybody here knows what a Deputy Chief Counsel is. But for the record, what does a Deputy Chief Counsel to the Governor do?

MR. GARG: So the Deputy Chief Counsel reports directly to the Chief Counsel; and more broadly, the Governor's Counsel's Office exists to provide the Governor with legal advice, specifically in the area of accomplishing the Governor's policy objectives.

MR. CRITCHLEY: And in the Office of Counsel, who do you report to?

MR. GARG: I report to Matt Platkin.

MR. CRITCHLEY: And are any individuals in the Counsel's Office reporting to you?

MR. GARG: Yes.

MR. CRITCHLEY: How many people report to you?

MR. GARG: So there are approximately six attorneys who report to me and one of the other Deputy Chief Counsels.

MR. CRITCHLEY: And in your first paragraph, you indicate -- I guess referring to Ms. Brennan -- you say, "I admire and respect her bravery." What do you mean by that?

MR. GARG: Well, Katie claims to have suffered a severe trauma, and she is now coming forward publicly about that. And I very much admire her bravery in coming forward publicly.

MR. CRITCHLEY: In the third paragraph you say, "The next day, I told my supervisor, Matt Platkin, who was the Chief Counsel to the Governor, about my conversation with Katie."

Did you reduce to writing your exchange with Matt Platkin that occurred on that day that you refer to?

MR. GARG: I did not.

MR. CRITCHLEY: Did you take notes of any conversations you had with Matt Platkin about this?

MR. GARG: I did not.

MR. CRITCHLEY: So what you're testifying -- you're testifying about your memory. You have no documents that you used to refresh your recollection, correct?

MR. GARG: That's correct.

MR. CRITCHLEY: Did you create any documents to refresh your recollection?

MR. GARG: I did not.

MR. CRITCHLEY: Any e-mail exchanges or text exchanges regarding this?

MR. GARG: No.

MR. CRITCHLEY: Okay.

Now, can you tell us basically -- you said I told my supervisor. What did you tell him, meaning Matt Platkin; and after you told him, as best as you can recall, what did Matt Platkin say to you?

MR. GARG: So I told him what Katie had told me the previous night -- that she claimed that there was serious wrongdoing by a senior Administration official; and that Katie and I had decided to speak on the phone later that week.

MR. CRITCHLEY: And what did he say to you?

MR. GARG: He said that he appreciated that I came to him, and that I should keep him updated.

MR. CRITCHLEY: Did he ask you to take any action as a result of that, other than speaking with him, meaning Matt Platkin?

MR. GARG: I did not speak to anyone else, no.

MR. CRITCHLEY: Did he ask you to?

MR. GARG: No.

MR. CRITCHLEY: Did he ask you to speak to Heather Taylor, or somebody like that, in the Ethics Office?

MR. GARG: No.

MR. CRITCHLEY: Did he ask you to speak to anybody in the Attorney General's Office?

MR. GARG: No.

MR. CRITCHLEY: Did he ponder or ask questions about what your words were, "serious wrongdoing." Did he inquire as to what that possibly could be?

MR. GARG: He did not.

MR. CRITCHLEY: Did you inquire as to what it could be?

MR. GARG: I did not.

MR. CRITCHLEY: Did you ask her, "What is the serious wrongdoing you're talking about?"



MR. GARG: Did I ask Katie--

MR. CRITCHLEY: Yes.

MR. GARG: --on Tuesday, January 16?

MR. CRITCHLEY: Yes.

MR. GARG: I did not.

MR. CRITCHLEY: Is there any reason why you didn't?

MR. GARG: Well, after she said that, she said that she wanted to speak somewhere more private.

MR. CRITCHLEY: When she said that the person who had been involved in a serious wrongdoing was a senior Administration official, did you ask her to describe what this official did or who that official worked for?

MR. GARG: No, because she told me that she wanted to be somewhere more private.

MR. CRITCHLEY: Did you subsequently ask her who this senior official was?

MR. GARG: On January 19?

MR. CRITCHLEY: Right.

MR. GARG: No, because when I opened the conversation, I prefaced it by noting that I was not her lawyer and there was no privilege that attached to our conversation. And then following that, she decided that she did not want to come forward at that time.

MR. CRITCHLEY: Okay; now if we go down again, the last sentence on the first page, it says, "I later informed Matt Platkin that Katie had decided not to share any information with me."

When is it that this conversation took place?

MR. GARG: I believe I spoke to him by phone sometime over the weekend; so either that Saturday or Sunday

MR. CRITCHLEY: Could you give us an approximate timeframe that would be?

MR. GARG: Like I just said, I think it was during that weekend; so either that Saturday or Sunday.

MR. CRITCHLEY: I'm not being -- would that be January of 2018?

MR. GARG: That's correct.

MR. CRITCHLEY: And what did you say to him -- meaning Matt Platkin -- and what did Matt Platkin say to you?

MR. GARG: So, again, I relayed what Katie had told me the evening, or two days before; and that she had decided not to come forward at this time.

MR. CRITCHLEY: Was there an expression of concern, even though she did not tell you what it was; but she said -- she used the term *serious wrongdoing* involving a *high-ranking Administration official*. When you put those two clauses together, as lawyers that sends out alarm bells. Did you and Matt have a discussion as to what possibly this could have been, or express some concern that we may have some issue that we have to deal with that could explode up later on if we don't take action?

MR. GARG: We didn't speculate on what the wrongdoing could have been. But we respected her wishes not to come forward.

MR. CRITCHLEY: All right. But you would agree that when someone who you find-- Do you find Katie Brennan to be credible?

MR. GARG: I do.

MR. CRITCHLEY: When you find someone to be credible saying that, “I have information about serious wrongdoing involving a senior Administration official,” and you’re talking to the Chief Counsel, either of you did not say, “We should take some steps beyond just saying, ‘Okay let’s wait to see what happens?’”

MR. GARG: Both of us felt that we should respect her wishes and her decision not to come forward.

MR. CRITCHLEY: Well, I understand your respecting her wishes. But as a public official, as a government official, when you have someone you believe, who is holding a high-ranking position, telling you that there is serious wrongdoing involving a senior Administration official, we all have to make judgement calls, don’t we, as lawyers?

MR. GARG: We do have to make judgement calls.

MR. CRITCHLEY: And when you are a lawyer, Deputy Chief Counsel to the Governor, when you have these clauses coming together, doesn’t your judgement tell you, “We better take some action on this to follow up”?

MR. GARG: We didn’t have any specifics as to what that serious wrongdoing might entail.

MR. CRITCHLEY: I know; that’s the problem. You have to find out, because you have explosive words: *serious wrongdoing*. That can involve a lot of things, correct?

MR. GARG: That’s correct.

MR. CRITCHLEY: And you want to find out if you could put boundaries as to what *serious wrongdoing* means. It could involve serious

crimes; it could involve something that's insignificant. Were you concerned about what the serious wrongdoing was?

MR. GARG: We were concerned.

MR. CRITCHLEY: What did you do to follow up on that, in that timeframe?

MR. GARG: So we gave Katie -- or, I gave Katie an opportunity to come forward and she declined to do so.

MR. CRITCHLEY: Did you say, "Okay, Katie, I am the Deputy Chief Counsel. You just made an allegation of serious wrongdoing involving a senior Administration official. I demand you tell me who that was; and I demand you tell me what that serious wrongdoing is, because this affects the Administration." Did you think about doing that?

MR. GARG: I did not demand that Katie do anything.

MR. CRITCHLEY: Why not?

MR. GARG: Because Katie was my friend, and I wanted her to make an informed decision about what the ramifications of her coming forward were.

MR. CRITCHLEY: She may be your friend; I'm not disagreeing with that. But now you are Deputy Chief Counsel; you have a public duty to inquire about things of importance. You are advising the Governor; you have to make judgement calls. Now, as someone coming before you -- a high-ranking official, Katie Brennan -- coming before you and saying, "I have information about a serious wrongdoing involving a senior Administration official"-- you did not feel compelled to ask her, "I tell you, right now, I'm ordering you to tell me who that senior official is, and I am ordering you to tell me what the serious wrongdoing was?"

MR. GARG: I didn't have the authority to order Katie to do anything.

MR. CRITCHLEY: You didn't have the authority?

MR. GARG: Katie was not an Administration official at that time.

MR. CRITCHLEY: In January.

MR. GARG: Correct.

MR. CRITCHLEY: Well, when-- She became a State official in February of 2018.

MR. GARG: That's correct.

MR. CRITCHLEY: And before she was hired, did anyone say, "Katie, you know, in January you told me about this serious wrongdoing involving a high Administration official. Now we're hiring you in February of 2018 to a high-ranking position. I want you to tell me who that senior official was and what is the serious wrongdoing you alleged."

MR. GARG: I was not involved in her hiring process. And like I said earlier, the only person who I shared this information with was Matt Platkin.

MR. CRITCHLEY: I understand you're not involved in the hiring process. But you are the Deputy Chief Counsel, and you're talking to the Chief Counsel of the Governor. And now you have information about a high-ranking official, who is now working with the Administration -- Katie Brennan, February 2018 -- telling you that she has information about serious wrongdoing involving another senior official. And no one said to her, "Katie, I demand you tell me who that senior official is and what the serious wrongdoing is"?

MR. GARG: I don't know what other people may have told Katie or not.

MR. CRITCHLEY: I'm talking about you. Did you feel that in your role as Deputy Chief Counsel -- did you feel that it was incumbent upon you, in representing the Administration and the Governor, to take that action?

MR. GARG: No, I did not.

MR. CRITCHLEY: Did Matt Platkin discuss with you, "Maybe we should find out now that we're hiring her" -- meaning Kate Brennan -- as a senior official, "Let's ask her who the senior official is and what the serious wrongdoing is."

MR. GARG: Matt and I had no discussions about hiring Katie Brennan.

MR. CRITCHLEY: Before she was hired, did anybody have any discussions? "We're hiring Kate Brennan. Does anybody recall -- she told us about--" This is a hypothetical; I don't mean to-- Did anybody say, "Hey, before we hire her, we should find out what's going on." Did anybody have that discussion?

MR. GARG: I have no knowledge of anyone having that discussion.

MR. CRITCHLEY: Okay.

And on page 2, it says -- first paragraph, the next-to-the-last sentence -- "I told Matt Platkin that Katie wanted to speak to me about that same topic from January."

Now, as best as you can recall, where did this conversation take place?

MR. GARG: I believe it took place in his office.

MR. CRITCHLEY: You believe, or did it or did it not? I'm not--

MR. GARG: I recall it took place somewhere in the Governor's Office. I can't remember specifically where it was.

MR. CRITCHLEY: Fair enough. Did you take any notes regarding the conversation you had with Matt Platkin?

MR. GARG: I did not.

MR. CRITCHLEY: Now, was anybody present when you had this conversation with Matt Platkin?

MR. GARG: No one else was present.

MR. CRITCHLEY: As best as you can recall, can you tell us what you said to Mr. Platkin -- what you said, and what he said to you?

MR. GARG: I told him that Katie had called me the night before, and she had indicated that she wanted to speak about what she had previously referred to in January. And then I told him that she wanted to tell me in person, and so Katie and I set up a time to speak later that week.

MR. CRITCHLEY: Okay. So what you say is, "I told Matt Platkin that Katie wanted to speak to me about that same topic from January." And that same topic was a serious wrongdoing committed by a senior Administration official. Did Mr. Platkin express any alarm and ask you to find out who the senior official was and what the serious wrongdoing--

MR. GARG: Well, Matt understood that Katie had set up a time to speak later that week. And again, he asked me to keep him updated.

MR. CRITCHLEY: Did he ask you to report back and do a memo as to what conversations you were going to have with Ms. Brennan?

MR. GARG: He did not.

MR. CRITCHLEY: And when she told you that she had been raped by Al Alvarez, you said, "I was shocked. I was heartbroken for a friend, and I offered her my support."

This conversation took place between you and Katie Brennan in Princeton, correct?

MR. GARG: That's correct.

MR. CRITCHLEY: And it says, "The next day I spoke to Matt Platkin."

Okay; now, at this time, you know you have basically been told what the serious wrongdoing is and who the senior official is, correct?

MR. GARG: That's correct.

MR. CRITCHLEY: Did anyone ask you to reduce to writing what was said?

MR. GARG: No.

MR. CRITCHLEY: Did anyone ask you to take any action regarding what was said?

MR. GARG: No.

MR. CRITCHLEY: Did anyone ask you to report to the Attorney General that someone had told you that a senior official had committed a crime?

MR. GARG: No one asked me to report to the Attorney General.



MR. CRITCHLEY: As an attorney, did you think you had any duty, as Deputy Chief Counsel, to take some action, besides just having a discussion with Matt Platkin? Because now, Katie Brennan, a senior official, had advised you that another senior official, Mr. Alvarez, had committed a crime and raped her?

MR. GARG: I had a discussion with my supervisor, the Chief Counsel, and he indicated that no further action was necessary.

MR. CRITCHLEY: Do you think, in hindsight, that's the right judgement that should have been exercised?

MR. GARG: I think that's for you all to decide.

MR. CRITCHLEY: I'm asking you; you're the witness.

MR. GARG: I did what I thought was appropriate at the time.

MR. CRITCHLEY: Do you still think it's appropriate?

MR. GARG: I do.

MR. CRITCHLEY: Someone tells you that someone raped them, and no one takes any action to contact law enforcement?

MR. GARG: I don't know if any action was taken to contact law enforcement or not.

MR. CRITCHLEY: Okay. It says -- your next-to-the-last sentence -- "I sincerely hope that we will use this moment to come up with reforms that will make things better for survivors of sexual assault."

As you look back, now we're talking about -- you're hoping that reforms will flow from this hearing; and that's where we have common ground. We all hope that will occur. And you hope that, as a result of the reforms, things will be made better for survivors of sexual assault. Again, we have some concurrence as to what we hope comes out of this Committee.

Now, as you look back, you know, what was not done; what was not done to Katie Brennan at the time that would have made -- to use your words -- made things better for her as a survivor of sexual assault? What was not done then that should be done now?

MR. GARG: Sir, respectfully, I don't have access to all of the information about what various individuals did or didn't do. But I think it's the work of this Committee, as well as some of the other individuals and entities who are investigating this, to figure out what happened and what reforms can come of this.

MR. CRITCHLEY: Well, it's not too difficult to figure out what the allegations are. We have the allegations of Ms. Brennan; it's not a sophisticated type of crime we're talking about. We're talking about an incident that took place in a matter -- moment of time; rape. And she says that, basically, her efforts to seek some redress and justice -- her words -- were not followed. I'm just trying-- And if you don't have the answer, that's fine. Can you look back now, in your position as Deputy Chief Counsel, second-in-command in the Counsel's Office, as to what was not done, once she came forward, that should have been done; and hopefully this Committee will come up with some reforms?

MR. GARG: Again, I don't know all the actions that were either done or not done by various individuals. I only have access to a limited portion of the information here.

MR. CRITCHLEY: Fair enough.

Have you ever heard of a *special background check*?

MR. GARG: I'm sorry?

MR. CRITCHLEY: Have you heard the term, within the Administration, *a special background check*?

MR. GARG: I have not.

MR. CRITCHLEY: Were you the subject of a background investigation?

MR. GARG: I don't know.

MR. CRITCHLEY: Okay. Do you know if there were any protocols established as to who coming into the Murphy Administration would be subjected to a background check, and who would not be subjected to a background check?

MR. GARG: I don't know.

MR. CRITCHLEY: Without telling me who -- I don't want to know any names -- do you know of anyone who was considered for a position that was not given a position because of a problem that developed in a background examination?

MR. GARG: I don't think so, no.

MR. CRITCHLEY: You don't think so what, sir?

MR. GARG: Can you repeat the question?

MR. CRITCHLEY: Do you know, without -- I don't want any names, I just want to know -- do you know of anyone who was being considered for a position in the Murphy Administration for a job that, as a result of what was found out in a background investigation, was not offered a position?

MR. GARG: I don't know that.

MR. CRITCHLEY: Now, did Mr. Platkin ever tell you that he recused himself from this matter? When I say *this matter*, I'm talking about the matter involving Katie Brennan and Al. Alvarez.

MR. GARG: He mentioned that he had recused himself.

MR. CRITCHLEY: And what do you understand *recusal* to mean, when he said that to you?

MR. GARG: I did not understand the scope of his recusal.

MR. CRITCHLEY: What's your understanding of the word *recusal*?

MR. GARG: Well, recusal means to withdraw from your responsibility and handling of a particular matter. But I didn't know the scope of that recusal.

MR. CRITCHLEY: Now, when you say-- Are there any protocols within the Administration that are followed when someone "recuses" themselves from a matter?

MR. GARG: There are protocols, yes.

MR. CRITCHLEY: And are you familiar with those protocols?

MR. GARG: I'm familiar with those protocols as it relates to individuals in the Counsel's Office who recuse themselves from particular issues.

MR. CRITCHLEY: As best you can, can you tell us what those protocols are?

MR. GARG: So, to my understanding, when an individual is recused from a particular issue, because they have, say, worked on it in a previous job, they will write a letter outlining the scope of their recusal. And then usually if it's an Associate Counsel, they would give it me or one

of the other Deputy Chief Counsels. And we are supposed to know that, going forward, that individual is not involved in the handling of that matter.

MR. CRITCHLEY: It's not only anyone who has worked on a previous matter; it is also anybody who has an interest in the matter, correct?

MR. GARG: That's correct.

MR. CRITCHLEY: Do you know if Mr. Platkin exercised that protocol regimen?

MR. GARG: I don't know if he did that.

MR. CRITCHLEY: Who would-- If he exercised the protocol regimen that's required when you recuse, who would that protocol -- who would that writing go to?

MR. GARG: I'm not sure.

MR. CRITCHLEY: Were you recused?

MR. GARG: I didn't know what I would be recused from.

MR. CRITCHLEY: When she told you about this -- in March 2018, March 22, 2018 -- you knew Katie Brennan; you knew her for a couple of years. You knew Al Alvarez. Did you recuse yourself because of your knowledge of the two individuals involved in this "serious matter"?

MR. GARG: I was told there was nothing more for me to do, so I did not.

MR. CRITCHLEY: Okay.

Now, after March 22, 2018, did you have any conversations with anyone about this matter?

MR. GARG: No, I did not.

MR. CRITCHLEY: Now, I'm going to ask this question. Did you have any conversations -- other than Counsel; excluding Counsel -- did you have any conversations with anyone about this matter after the announcement of the formation of this Committee?

MR. GARG: I've had conversations with Counsel.

MR. CRITCHLEY: Other than Counsel.

MR. GARG: I've had conversations with other individuals about the effect that this Committee might have, the fact that I might be called to testify, and that sort of thing. But not about the substance.

MR. CRITCHLEY: I understand. Did you or anyone else discuss, in essence, the substance of your testimony?

MR. GARG: Not besides Counsel, no.

MR. CRITCHLEY: Did you discuss the substance of your testimony with Mr. Platkin?

MR. GARG: I did not.

MR. CRITCHLEY: Did he discuss his testimony with you?

MR. GARG: He did not.

MR. CRITCHLEY: Did you have a discussion of this matter with, for example, when I say anyone -- including the Governor on down?

MR. GARG: I did not.

MR. CRITCHLEY: Did you have any conversations with the Governor at all about this matter?

MR. GARG: I did not.

MR. CRITCHLEY: Did you have any contact -- when I say *contact*, I'm just going through a list of questions, so don't-- Please, just -- I have to go through a list of questions.

Did you have any contact with anyone from Hudson County Prosecutor's Office?

MR. GARG: I did not.

MR. CRITCHLEY: Did you cause anyone to have any contact with Hudson County Prosecutor's Office regarding this matter?

MR. GARG: I'm sorry; can you repeat that?

MR. CRITCHLEY: Did you cause anyone to have contact with the Hudson County Prosecutor's Office over this matter?

MR. GARG: I did not ask anyone to reach out to that office, if that's what you're asking me.

MR. CRITCHLEY: Great. Do you know if anyone did reach out?

MR. GARG: I don't know that.

MR. CRITCHLEY: Do you know Ms. Suarez?

MR. GARG: Do I know her?

MR. CRITCHLEY: Yes.

MR. GARG: I don't.

MR. CRITCHLEY: Okay.

Just one second, please, Mr. Garg. I don't know if I have anything else.

Thank you very much, sir.

MR. GARG: Thank you.

MR. HAYDEN (Committee Special Counsel): Good morning. Thank you for your appearance here today, and your testimony.

Just to follow up on questions of Mr. Critchely.

On the night of the Inaugural Ball, when you talked to Katie Brennan on January 16, and she said the words *serious wrongdoing*, did you have any understanding as to whether or not the serious wrongdoing involved her or something else?

MR. GARG: I did not know that, no.

MR. HAYDEN: Did you have any understanding as to whether the wrongdoing was a completed act or ongoing conduct?

MR. GARG: I did not know that.

MR. HAYDEN: As Mr. Critchley was asking you, was there any concern -- and I understand we're looking backwards -- that the wrongdoing could have been ongoing; and there might have been a need to interfere with the flow of the wrongdoing that Katie Brennan was telling you about.

MR. GARG: I was concerned, yes.

MR. HAYDEN: Because certainly, there might be a difference between a wrongdoing which was unique to her -- where she might have some deference, in terms of being able to say, "I do or do not want it explored" -- and a wrongdoing which involved government, and could have been going forward in terms of what it was, correct?

MR. GARG: I agree there could be a difference.

MR. HAYDEN: And looking back on it, do you think it would have been appropriate to have inquired into, at least, some basics as to the nature of the wrongdoing?

MR. GARG: I gave Katie an opportunity to come forward, and she declined to do so.



MR. HAYDEN: But the -- as Mr. Critchely suggested in his questions -- the right of Katie to say "I don't want to talk about it" might be different if it was a wrongdoing unique to her, as opposed to a wrongdoing which involved government. Would you agree with that?

MR. GARG: I would.

MR. HAYDEN: Now, when you spoke to Mr. Platkin the next day about a conversation with somebody-- And by the way, as of this time, had Ms. Brennan been hired by the Administration?

MR. GARG: No, she had not.

MR. HAYDEN: And you found Ms. Brennan to be a credible person?

MR. GARG: I did.

MR. HAYDEN: So a credible person having talked about an undefined serious wrongdoing, was there any discussion with Mr. Platkin about, "Well, we at least better find out something about the nature of the wrongdoing to make sure we're not going to have an ongoing problem."

MR. GARG: We didn't have any information about the nature of the wrongdoing.

MR. HAYDEN: The nature of the wrongdoing could have been an ongoing contract; the nature of the wrongdoing could have been the conduct of a State official; the nature of the wrongdoing could have been something which could have been an embarrassment to the Administration, as opposed to a wrongdoing which could be unique to Ms. Brennan. And I will concede that I think something unique to Ms. Brennan -- she has a substantial weight in terms of whether she wants it followed up. But nobody delved into the wrongdoing, did they, at that point in time?

MR. GARG: That's correct.

MR. HAYDEN: And I take it, with respect to Mr. Platkin, that there was no indication, as of the conversation the next day that he knew anything about what the wrongdoing was or even Ms. Brennan's claim about the wrongdoing.

MR. GARG: I'm sorry; could you repeat the question?

MR. HAYDEN: I take it that Mr. Platkin didn't have any idea about the claim of the wrongdoing until you reported it to him.

MR. GARG: That's correct.

MR. HAYDEN: When you had the conversation with Katie Brennan again on January 18, and she indicated that she would like to meet with you personally -- and I believe you told us that you then advised Mr. Platkin in advance. Did Mr. Platkin say anything about, well, he also had scheduled a meeting with Katie Brennan?

MR. GARG: He did not say that, no.

MR. HAYDEN: And as we know now, in terms of what the timeline was, Mr. Platkin had a dinner meeting with Katie Brennan two days before your dinner meeting.

MR. GARG: That's correct.

MR. HAYDEN: So you would not -- the meeting may not have even been scheduled between Mr. Platkin and Katie Brennan; but he did not mention it to you.

MR. GARG: He did not.

MR. HAYDEN: Now, after Mr. Platkin's meeting with Katie Brennan, did the two of you have any conversation, between his dinner meeting and your dinner meeting, as to what Katie Brennan told him?

MR. HAYDEN: We did not.

MR. HAYDEN: When you, then, had your dinner meeting, or your meeting with Katie Brennan, and she told you about the sexual assault and the rape, did you believe her?

MR. GARG: I did.

MR. HAYDEN: Did you -- and I believe you indicated you felt bad for her; you felt compassion for her; and you were, you know, sympathetic towards her.

MR. GARG: I was.

MR. HAYDEN: Did you then have a follow-up conversation with Mr. Platkin about the allegation by a credible person of a sexual assault?

MR. GARG: Well, like I said in my opening, we discussed the matter the next day.

MR. HAYDEN: And at that point in time, or at any point in time, did you become aware that there had been an inquiry by the Hudson County Prosecutor's Office as to whether or not there should be a criminal prosecution; and a decision was made on or about December 1 not to prosecute?

MR. GARG: So when Katie and I met, she did walk me through the timeline. And she discussed how she wanted the Prosecutor to press charges, but the Prosecutor declined to do so.

MR. HAYDEN: By the way, at any time did you make any inquiry to Mr. Alvarez as to this allegation of what happened?

MR. GARG: I have not spoken to him about this, no.

MR. HAYDEN: Being aware of an allegation by a credible person, being aware of the fact that there was at least an active criminal investigation of a criminal offense against a credible person, did you see any need for an independent inquiry or investigation within the Administration as to Mr. Alvarez, who at that point in time was holding a significant position as Chief of Staff?

MR. GARG: As I stated earlier, I spoke about this to Matt Platkin. Matt mentioned that he had relayed it to Heather Taylor, and that there was nothing more for me to do.

MR. HAYDEN: Well, I take it then, part of that is the remote discussion between you and Mr. Platkin as to whether or not there should be an independent investigation as to what happened.

MR. GARG: Matt said that he referred it to Heather.

MR. HAYDEN: Did you offer any opinion to Mr. Platkin as to whether or not you believed that there should be some inquiry as to what happened?

MR. GARG: I did not offer any opinion.

MR. HAYDEN: You would agree with me, sir, would you not, that there is a different standard of proof as to whether or not there should be a criminal investigation, or as to whether or not somebody should be hired where they would be in a supervisory position over other employees?

MR. GARG: I think those are two different inquiries, correct.

MR. HAYDEN: Okay. And for better or for worse -- and I know we're looking back -- there was no discussion at that time as to whether or not we should do our own independent investigation.

MR. GARG: I was not involved in any of those discussions.

MR. HAYDEN: Did you have any conversations with Heather Taylor about this inquiry?

MR. GARG: I did not.

MR. HAYDEN: Or about, even, your conversation with Ms. Brennan?

MR. GARG: I did not.

MR. HAYDEN: Thank you, sir.

MR. GARG: Thank you.

MR. CRITCHLEY: I just have a follow-up; just a follow-up. When Katie Brennan told you, on March 22, 2018, about the rape, did she expect you to take any action?

MR. GARG: She did not ask me to take any actions.

MR. CRITCHLEY: Did you think actions should be taken?

MR. GARG: I thought I should raise the matter to Matt; and Matt told me that no action was necessary from me.

MR. CRITCHLEY: You told Matt Platkin that Katie Brennan told you that Al Alvarez had raped her, and Matt Platkin told you “no action had to be taken”?

MR. GARG: Matt said that there’s nothing more for me to do.

MR. CRITCHLEY: Nothing more for you to do.

Did Katie Brennan, in words or demeanor, express some concern that as a result of her coming forward -- about another senior official with close ties to the Murphy Administration -- that she would be retaliated against?

MR. GARG: She did not express that concern.

MR. CRITCHLEY: And do you know if there ever was an internal investigation conducted -- as a result of the allegation made by Katie Brennan that she had been raped by Al Alvarez -- by the Administration?

MR. GARG: I am not aware of any internal investigation, besides what I have seen in the news reports.

MR. CRITCHLEY: Were you aware that-- Did you have any conversation with Mr. Cammarano about this?

MR. GARG: I did not.

MR. CRITCHLEY: Did you become aware that Mr. Cammarano allegedly told Mr. Alvarez, on March 26, 2018, that he should leave State government?

MR. GARG: I saw that in the news reports.

MR. CRITCHLEY: Other than seeing it in the newspaper reports, were you aware of that?

MR. GARG: I was not.

MR. CRITCHLEY: Did Matt Platkin tell you, on or about March 26, 2018, or thereafter, that Al Alvarez was told to leave State government?

MR. GARG: He did not tell me that.

MR. CRITCHLEY: One second, please.

Did you provide Katie Brennan any assurance that she would not be retaliated against if she went forward with her claim against another high-ranking official, accusing that official of rape?

MR. GARG: We did not discuss the prospect of retaliation.

MR. CRITCHLEY: Were you familiar with the procedure that should be followed when someone makes a complaint of the nature that Katie Brennan made involving Al Alvarez? And when I say *procedure*, internal procedures in terms of investigations?

MR. GARG: So I am familiar with the EEO policy. I don't know if that's what you're referring to.

MR. CRITCHLEY: What do you-- Tell me what you're familiar with.

MR. GARG: So my understanding is that when someone feels that they have been the victim of harassment or discrimination, they are to report the matter; and if someone becomes aware of that, they are to report the matter to the EEO Officer.

MR. CRITCHLEY: Did you ever receive any advice from anybody during this period of time -- and when I say period of time, I'm talking about March 2018, going forward -- about confidentiality?

MR. GARG: I did not receive any advice about confidentiality.

MR. CRITCHLEY: Did Matt Platkin tell you, "Hey, let's not discuss this with anybody because we have to be confidential"?

MR. GARG: He didn't tell me that, no.

MR. CRITCHLEY: Did Raj Parikh tell you?

MR. GARG: I haven't spoken to Raj about this matter.

MR. CRITCHLEY: Do you know Raj Parikh?

MR. GARG: I do.

MR. CRITCHLEY: Are you familiar with the memo that Raj Parikh sent on December 3, 2017?

MR. GARG: I've seen some of the news coverage about it, but I have no familiarity with it outside of that.

MR. CRITCHLEY: Now, are you familiar with the provisions dealing with confidentiality, in terms of -- as they apply to an EEO investigation?

MR. GARG: I'm familiar that it's to be kept confidential.

MR. CRITCHLEY: Well, *confidential* doesn't-- We could discuss the law and see if we agree. Confidentiality provisions are not absolute; would you agree with that?

MR. GARG: I don't know the specifics of the confidentiality provision. I just know that if you are aware of such a report, you are to report it to the EEO Officer.

MR. CRITCHLEY: Okay. Well, I mean, I'm just bringing it up because you mentioned some familiarity. Are you aware that confidentiality is only applicable to the extent possible under the circumstances?

MR. GARG: I'm not aware of the exact standard, no.

MR. CRITCHLEY: Are you aware that confidentiality is only applicable where it's appropriate?

MR. GARG: I'm not aware of that, no.

MR. CRITCHLEY: Are you aware that the law -- N.J.A.C. 4:7-3J -- states, basically, that confidentiality does not apply to anybody who has relative material, or has a legitimate need to know about the matter?

MR. GARG: Again, I don't know the specifics of that.

MR. CRITCHLEY: Do you think, based upon your position as Deputy Chief Counsel, that when you found out, and Matt Platkin found



out in March 2018, that the Governor had a legitimate need to know that a senior official in the Administration had accused another senior Administration official of rape? Do you think he had a legitimate need to know?

MR. GARG: I don't report directly to the Governor, so I don't believe that was my call to make.

MR. CRITCHLEY: I'm not saying-- But I'm asking you; do you think he had a legitimate need to know that a member of his Administration had been accused of rape by another member of his Administration?

MR. GARG: I can't speculate on that without knowing all the specific information.

MR. CRITCHLEY: Well, just-- Here's what we have: A senior official in the Administration accuses another senior official in the Administration of rape. Senior official, senior official, rape. Do you think the Governor has a legitimate need to know that a senior official in his Administration has been accused of rape?

MR. GARG: Again, I don't know all the protocols and the exact standards of confidentiality, so I don't want to speculate.

MR. CRITCHLEY: I'm not asking you to speculate. I mean, those are the facts. A senior official in the Administration has been accused by another senior official in the Administration of rape. Those are facts. Does the Governor have a legitimate need to know that a senior official in his Administration has been accused of rape by another senior official, which occurred during the Campaign?

MR. GARG: I don't feel I can appropriately answer that question.

MR. CRITCHLEY: All right, fair enough.

Thank you.

ASSEMBLYWOMAN PINTOR MARIN: Just so that we stay in this area -- Assemblywoman Schepisi, very quickly, so we can move on.

And then Ms. Alito will go.

ASSEMBLYWOMAN SCHEPISI: Thank you.

Just going back to your testimony in your opening statement, you told Katie Brennan you may not be able to keep things confidential; you may have to tell Matt Platkin. Why did you tell her this?

MR. GARG: So Katie's my friend. I know she's not a lawyer, so I didn't want her to be confused and think that because she was telling something to me that it would be privileged.

ASSEMBLYWOMAN SCHEPISI: And did you feel that you would have to tell Matt Platkin because he's your supervisor?

MR. GARG: Not knowing the specifics of what she alleged, I thought that might be a possibility.

ASSEMBLYWOMAN SCHEPISI: Okay. And who is Matt Platkin's supervisor? Who does he report to?

MR. GARG: He reports to the Governor.

ASSEMBLYWOMAN SCHEPISI: Okay. Would Matt Platkin have the same obligations to not keep things confidential with his supervisor that you had?

MR. GARG: I don't know about Matt Platkin's obligations.

ASSEMBLYWOMAN SCHEPISI: If you were in Matt's position, would you have counseled Katie with the same advice had she come to you?

MR. GARG: I don't want to speculate as to what I would have done had I been in Matt's position.

ASSEMBLYWOMAN SCHEPISI: Okay.

No further questions.

ASSEMBLYWOMAN PINTOR MARIN: Ms. Alito.

MS. ALITO: Good morning, Mr. Garg.

MR. GARG: Good morning.

MS. ALITO: You indicated that you're familiar with the State's anti-harassment policy, correct?

MR. GARG: I am.

MS. ALITO: And you are aware of the fact that that policy imposes an affirmative obligation on supervisors to report harassment or EEO violations when they observe them or become aware of them, correct?

MR. GARG: That's correct.

MS. ALITO: Does the State also have a whistleblower policy?

MR. GARG: I'm not familiar with that policy, no.

MS. ALITO: You're not aware of whether the State does or does not have a whistleblower policy with regard to employees?

MR. GARG: I'm aware that there is such a policy in effect; I don't know the specifics of it.

MS. ALITO: Okay. Do you know whether that policy also imposes an affirmative obligation on employees to report wrongdoing?

MR. GARG: I don't know the answer to that, no.

MS. ALITO: You don't know whether the whistleblower policy would have required someone -- especially someone in a supervisory position who is aware of serious wrongdoing -- to report that serious wrongdoing?

MR. GARG: I don't know.

MS. ALITO: And as a consequence, I assume you never advised Katie Brennan that if she was aware of serious wrongdoing, that there was an obligation to report it?

MR. GARG: I did not advise her to do that.

MS. ALITO: The State also has an ethics policy, correct?

MR. GARG: That's correct.

MS. ALITO: And you're familiar with that policy, correct?

MR. GARG: Which specific part of the policy?

MS. ALITO: Are you familiar with the policy overall?

MR. GARG: I know we have an ethics policy in place, and I think that governs a whole variety of matters.

MS. ALITO: Does that ethics policy also place an affirmative obligation on supervisory employees to report serious wrongdoing?

MR. GARG: I don't know that it addresses serious wrongdoing.

MS. ALITO: Thank you.

SENATOR WEINBERG: Thank you; and being no further questions, thank you for appearing.

Okay; we're going to move this along, because we have a witness who has a time constraint.

ASSEMBLYWOMAN NANCY F. MUÑOZ (Co-Vice Chair): Thank you.

ASSEMBLYWOMAN MUÑOZ: You know, we've been talking a lot about whether or not you knew the policies and procedures regarding sexual harassment and reporting.

And there is some vague feeling here that there were some things that you weren't really sure about. Did you review the policies after you had a conversation with Katie? Did you have the opportunity to do that?

MR. GARG: I didn't review the policies, no.

ASSEMBLYWOMAN MUÑOZ: Because, specifically, what your obligations were to report to a) your supervisor; or that, in this case, that a serious crime had been told to you and what your obligations were to do with that information.

MR. GARG: I didn't review the policy after I spoke with Katie.

ASSEMBLYWOMAN MUÑOZ: I mean, do you think you should have reviewed that policy?

MR. GARG: Again, I spoke to Matt; and Matt told me that no further action was necessary.

ASSEMBLYWOMAN MUÑOZ: See, that's-- I find that statement very disturbing; that no further -- there's nothing more to do. You keep repeating that. And yet, she was a friend of yours who claimed to -- who told you, and you said was a credible witness, a credible person, that she had been raped. And yet you continue to say, "There was nothing more for me to do." As you look at this now, do you believe -- still believe that there was nothing more for you to do?

MR. GARG: I keep repeating that because that's what Matt told me; and I am recounting that before this Committee.

ASSEMBLYWOMAN MUÑOZ: So--

SENATOR WEINBERG: I'm going to interrupt here--

ASSEMBLYWOMAN MUÑOZ: Yes, okay; but I just want to make sure--

SENATOR WEINBERG: --and if in fact anybody has any further questions, we can call Mr. Garg back, with your agreement, so that we can--

(confers with Committee)

I'm sorry? You have a question too?

(confers with Committee)

All right; then let's move along. If we need you back, Mr. Garg, we will let you know.

MR. PORRINO: I would just ask if there are questions, if we could get them done today, so that Mr. Garg may not have to come back. That would be our preference, if possible. He's here, willing to answer whatever questions the Committee has.

SENATOR WEINBERG: All right; thank you very much. We will try to accommodate everybody's schedule.

But we do have somebody who's here from Washington, D.C., and has some time constraints.

Thank you for your time and your patience this morning.

MR. GARG: Thank you.

SENATOR WEINBERG: And we would like to call Jonathan Berkon.

SENATOR OROHO: Madam Chair, should we ask the witness to stay, or--

SENATOR WEINBERG: Yes, the witness is welcome to stay; or we can give you a telephone call back this afternoon.

Mr. Berkon, have a seat.

MR. CRITCHLEY; Wait, wait, Chris. Do you have a question, Chris?

MR. PORRINO: (off mike) Did you say you wanted the witness to stay?

SENATOR WEINBERG: I'm sorry?

MR. HAYDEN: I think it's his option--

MR. PORRINO: Okay.

MR. HAYDEN: --to stay or not; or he'll get a phone call.

SENATOR WEINBERG: Yes, right. You are within commuting distance. (laughter)

Mr. Berkon, just introduce yourself and who you are accompanied by.

JONATHAN S. BERKON, Esq.: Hi, there.

My name is Jonathan Berkon; I'm a partner at Perkins Coie law firm.

And this is Barack Cohen, who is also a partner at Perkins Coie.

SENATOR WEINBERG: Good morning.

MR. BERKON: Good morning.

SENATOR WEINBERG: Go ahead.

MS. WOZUNK: Good morning, Mr. Berkon.

Your testimony is being recorded so that it may be transcribed for the Committee and it may be used in other proceedings. Do you understand that?

MR. BERKON: Yes.

MS. WOZUNK: Please know all of your responses should be verbal; we cannot record a head shake or a nod. If you do not understand a question, please ask for clarification. Otherwise, the Committee will assume that you understand the question, and that your answers are responsive to that question.

Do you understand those directions?

MR. BERKON: Yes.

MS. WOZUNK: Mr. Berkon, do you understand that if the statements you make today are willfully false, if you fail to answer a pertinent question or commit perjury, you may be subject to penalties under the law?

MR. BERKON: Yes.

MS. WOZUNK: Do you understand that you have certain rights under the Code of Fair Procedure, including the right to have your Counsel submit proposed questions on your behalf?

**BARACK COHEN, Esq.:** Yes, we understand.

MS. WOZUNK: Does your Counsel have any questions to submit today?

MR. COHEN: No questions.

MS. WOZUNK: You are entitled to a copy of the transcript of your testimony, at your expense, when such copy is available.

Do you understand that?



MR. BERKON: Yes.

MS. WOZUNK: You have the right to file a brief, sworn statement relevant to your testimony, for the record, at the conclusion of your appearance today.

Do you understand that?

MR. BERKON: Yes.

MS. WOZUNK: Before the Committee proceeds with the oath, do you have any questions?

MR. BERKON: I do not.

SENATOR WEINBERG: Thank you, Mr. Berkon.

Please stand and raise your right hand.

(Senator Weinberg administers oath)

Please be seated.

You have an opening statement, which we would be happy to have you read into the record.

MR. BERKON: Thank you very much.

Thank you for inviting me to testify as part of the New Jersey Legislative Select Oversight Committee's review of the State's policies and procedures.

These are issues of vital importance, and I hope that my testimony today assists in your review.

My name is Jonathan Berkon; I am a partner in the Political Law Group at Perkins Coie, based in Washington, D.C. My practice principally involves the representation of Democratic and Progressive campaigns, committees, and organizations around the country. Our firm serves as an outside counsel to Governor Murphy's Campaign Committee,

Murphy for Governor; we have served in that role since the Campaign's inception in 2016.

On Friday, June 1, 2018, Governor Murphy forwarded an e-mail chain, with Katie Brennan, to Chief Counsel Matt Platkin and me. Ms. Brennan's e-mail referenced a sensitive matter that had happened during the Campaign.

I did not reply to the Governor's e-mail, and I did not have any additional communications with Governor Murphy regarding Ms. Brennan, prior to October 2018.

When I received the e-mail from Governor Murphy, I did not know who Ms. Brennan was, and I did not know what Ms. Brennan was referring to in her e-mail. That evening I spoke with Mr. Platkin by phone. Mr. Platkin told me that Ms. Brennan had accused Al Alvarez of sexually assaulting her. That was the first time I had heard this awful news.

I work with campaigns, including gubernatorial campaigns across the country. When those campaigns are successful, I continue to represent the campaign entity. And when a legal matter arises that implicates both the campaign and the official office, a decision must be made as to which counsel will handle the matter.

And in some cases, the official counsel and I will work together. That is what happened here. During our initial call, Mr. Platkin and I decided that it made sense for me, as the Campaign's lawyer, to reach out to Ms. Brennan, because her e-mail had indicated that the sensitive matter at issue had occurred during the Campaign. But we agreed to remain in close touch about it.

The day after I spoke with Mr. Platkin, I e-mailed Ms. Brennan. I explained who I was and why I was reaching out. I told Ms. Brennan that I was based in Washington, D.C., but was happy to travel to New Jersey to meet with her or to set up a phone call, whichever she preferred.

Two days later, Ms. Brennan e-mailed me that she was conferring with her attorney, and would be in touch shortly.

That week -- and based on a review of text messages, I believe it was on Thursday, June 7 -- Mr. Platkin told me in a telephone call that Mr. Alvarez would be leaving the Administration. He also told me that I could convey this information to Ms. Brennan. I e-mailed Ms. Brennan that I had an update for her. Ms. Brennan asked if we could speak by phone that Sunday, June 10; and during that initial conversation -- as Ms. Brennan testified -- I told her that Mr. Alvarez would be leaving the Administration.

Ms. Brennan e-mailed me later that week and asked if we could have a second telephone call. I agreed, and we spoke the following Monday, June 18. We then had a third telephone call, this time with Ms. Brennan's attorney, on June 27.

During our follow-up calls, Ms. Brennan asked me for additional information about Mr. Alvarez's departure -- namely, why he was leaving. And as Ms. Brennan testified before this Committee, I told her that I could not provide her with additional information regarding the circumstances of Al Alvarez's departure. I know that was a source of frustration for Ms. Brennan; and at a human level, I felt badly about that, and I still do.

Thank you again for inviting me to participate in this hearing.

SENATOR WEINBERG: Thank you, Mr. Berkon.

I have a few questions for you.

First of all, I just want to clarify for all the members of this Committee exactly who is your client.

MR. BERKON: My client is Murphy for Governor.

SENATOR WEINBERG: Do you represent the Governor himself in any litigation, negotiations -- anything other than the Campaign, Murphy for Governor?

MR. BERKON: We have represented the Governor personally as well.

SENATOR WEINBERG: In what capacity?

MR. BERKON: We have done so mainly in circumstances that predated his time as Governor; and so that would be the principal times that those representations occurred. I'm trying to think if there were other instances, since he became Governor, in which we had matters. I'm happy to think about that some more and provide that information.

SENATOR WEINBERG: Okay; well, let's not talk about just before he became Governor; but keep it in the confines of the Campaign.

MR. BERKON: Yes.

SENATOR WEINBERG: Besides having the Campaign as your client, do you have -- during this period of time, did you have the Governor as your client?

MR. BERKON: Yes.

SENATOR WEINBERG: Okay.

Do you have any background or any responsibility for Human Resources policies, procedures?

MR. BERKON: It is not my specialty. As I mentioned in my introduction, we represent campaigns across the country; campaigns, as all of you know very well, tend to be smaller start-up entities that do not have internal counsel. They often rely on outside counsel, and we were one of the outside counsels of this Campaign to prepare materials and information regarding Human Resources.

I oftentimes rely on my colleagues for certain matters. But I do, certainly, quite frequently, give advice on employment matters as well.

SENATOR WEINBERG: And who was responsible for the day-to-day operations of the Campaign, or the person who you most interfaced with?

MR. BERKON: The person who would be responsible for compliance and operations on the Campaign was Rob Long.

SENATOR WEINBERG: Would you spell that name, please?

MR. BERKON: Sure; R-O-B L-O-N-G.

SENATOR WEINBERG: And that is somebody who was stationed in the Campaign?

MR. BERKON: Correct.

SENATOR WEINBERG: Okay; was he an employee of the Campaign, or of yours?

MR. BERKON: He was an employee of the Campaign.

SENATOR WEINBERG: Okay. And he was responsible on the day-to-day operations, and he was the person you dealt with mostly.

MR. BERKON: Correct, on matters that would have involved operations.

SENATOR WEINBERG: Okay.

Do you have any idea who opens the mail that comes to the Campaign Headquarters? Was that somebody's responsibility?

MR. BERKON: I do not know who would have done that.

SENATOR WEINBERG: Okay.

Now, you said on Friday, June 1, Governor Murphy forwarded you an e-mail, which we have all seen; the e-mail with Katie Brennan, to Chief Counsel Platkin, etc. Now, when you got that e-mail, what was your first instinct; what was your first instinct to do? You got that copy from the Governor himself?

MR. BERKON: Yes, I did get that from the Governor himself.

SENATOR WEINBERG: And what was your first instinct? You get an e-mail from the Governor; did he say anything in the e-mail he sent to you?

MR. BERKON: I think we all have the e-mail. I will pull it up just so I am accurate.

MR. CRITCHLEY: And for the record, Counsel, could you give us the date-stamp number?

MR. BERKON: Absolutely. It is Berkon003.

So the Governor's e-mail to Mr. Platkin and me, at 7:42 p.m. on Friday, June 1, said, "M/J FYI.P."

SENATOR WEINBERG: And what did you understand that to mean?

MR. BERKON: So I didn't focus as much on that piece of it; that's the way the Governor tends to correspond in an e-mail -- with kind of initials like that. I read down and saw the e-mail that Ms. Brennan had sent to the Governor and the First Lady.

SENATOR WEINBERG: And did that lead you to believe that there might be some expectation-- What did FYI mean to you?

MR. BERKON: I mean, when I get an e-mail like that, my initial instinct -- which is what I did -- was to reach out to Mr. Platkin and speak to him.

SENATOR WEINBERG: And so your initial instinct was to reach out to Mr. Platkin, rather than to reach out to the Governor, who sent you the e-mail.

MR. BERKON: Correct.

SENATOR WEINBERG: Okay. And you said in your opening statement that you had a discussion with Mr. Platkin that very evening, I think?

MR. BERKON: Correct.

SENATOR WEINBERG: So though it was a weekend -- I guess, it was Friday night -- and you got an e-mail from the Governor, "FYI," you call Mr. Platkin. It was serious enough, I assume, for you to want to address it as quickly as possible.

MR. BERKON: Yes.

SENATOR WEINBERG: And Mr. Platkin shared with you what?

MR. BERKON: Mr. Platkin shared with me that Ms. Brennan had accused Mr. Alvarez of sexual assault.

SENATOR WEINBERG: And did you ask about who these two people were, or did you know who they were?

MR. BERKON: I knew who Mr. Alvarez was; he had been working on the Campaign since its inception in 2016. And prior to that, he

had worked for New Way for New Jersey, which was a political organization that I had previously represented. So I knew who Mr. Alvarez was; I didn't know precisely what position he had in the government. I did not know who Ms. Brennan was.

SENATOR WEINBERG: Okay. So the Chief Counsel to the Governor fills in some rather important details to you -- that somebody you at least knew was accused of raping another senior official. Is that correct?

MR. BERKON: That is correct.

SENATOR WEINBERG: Okay; and what did you tell Mr. Platkin, or did you give Mr. Platkin any advice at that point?

MR. BERKON: We had a back-and-forth; and I don't have notes on the call, so I am doing this from memory. And my recollection is that we discussed, principally, two things. The first was kind of an exchange of views on the proper response to this, with respect to Mr. Alvarez. And I was certainly of the view that someone who had this level of -- this kind of allegation against them, it would not be tenable to remain in the government. Mr. Platkin agreed with me; we were on the same page in that respect.

The second thing we discussed was a follow-up with Ms. Brennan, and what the appropriate follow-up would be. And we decided, during that call, that given the language in her e-mail and the references to the Campaign, it made sense for me to call.

SENATOR WEINBERG: Okay; so you and Mr. Platkin agreed that it would be untenable for Mr. Alvarez to stay in government. Is that correct?

MR. BERKON: Yes.



SENATOR WEINBERG: And why did you make that decision?

MR. BERKON: Because of the severity of the allegation.

SENATOR WEINBERG: Did Mr. Platkin or Mr. Cammarano have any discussion with you that Mr. Alvarez had already been asked to leave State government prior to June of 2018?

MR. BERKON: I don't remember whether we had that conversation. I've obviously since read about it, and I don't know whether I know about it because I read about it, or because it was part of the conversation. And I did not speak to Mr. Cammarano about it; only Mr. Platkin.

SENATOR WEINBERG: Okay.

Now, you and Mr. Platkin are having a-- You're representing the Campaign; you don't work for State government, correct?

MR. BERKON: Correct.

SENATOR WEINBERG: You have no responsibility for senior officials or Human Resources in State government, correct?

MR. BERKON: Correct.

SENATOR WEINBERG: Okay. But you and Mr. Platkin are discussing terminating Mr. Alvarez, correct?

MR. BERKON: I think it would be fair to say that we are discussing whether someone with that level of allegation can remain in the government. I think terminating-- And again, I don't work in State government, so I don't want to-- Maybe *termination* and *resignation* mean the same thing--

SENATOR WEINBERG: Well, pardon me, but you don't have to work for State government to understand the words *separation, termination*: I'm sorry, we don't want you here anymore. That's not a State government use of the English language. I think most of us understand that.

But I want you to correct me if I'm wrong -- you and Mr. Platkin are discussing, on the phone -- prior to your having a conversation with Katie Brennan -- that somehow Mr. Alvarez should be separated, terminated, resigned, whatever, from State government. Is that correct?

MR. BERKON: Correct.

SENATOR WEINBERG: Okay. The following day-- And I know we saw the e-mails; there were a few days when you had some scheduling conflicts, both of you, so you were unable to speak. And tell us about that first conversation, if you would, with Katie Brennan.

MR. BERKON: Yes, so-- And just to back up a bit, because I think the context is helpful.

So I initially reached out to Ms. Brennan the following day, which would have been a Saturday. She got back to me two days later, on a Monday, and indicated that she was conferring with her attorney and would get back to me.

My next substantive communication with her was on that Thursday, when I reached out to her and told her that I had an update. It was then that a call was scheduled for that Sunday, and that call was to discuss the update that I had referenced.

SENATOR WEINBERG: Okay. So we're now moving to the first telephone conversation you had, correct?

MR. BERKON: Correct.

SENATOR WEINBERG: Okay; and could you tell us about that call? And include in that -- you said to Ms. Brennan that you had an *update*. What were you referring to?

MR. BERKON: And again, forgive me, because I don't have notes; I'm going off text messages and memory.

My recollection is that the news that Mr. Alvarez, in fact, would be departing from the government was conveyed to me -- not in my first conversation with Mr. Platkin, but later that week. And again, based on the text messages, I think it would have happened that Thursday, prior to when I e-mailed her.

SENATOR WEINBERG: Okay; so prior to your first phone conversation with Ms. Brennan--

MR. BERKON: Correct.

SENATOR WEINBERG: --you had another conversation with Mr. Platkin, at which Mr. Alvarez's employment was again discussed? Is that correct?

MR. BERKON: Correct. I was told that he would be leaving the government.

SENATOR WEINBERG: And can you tell us what Mr. Platkin told you? Were there dates; was there any information around his leaving State government?

MR. BERKON: I don't recall that there was any timeline that was set.

SENATOR WEINBERG: Did you think that a timeline should be set?

MR. BERKON: I don't remember ever suggesting that a timeline be set.

SENATOR WEINBERG: Okay; but you had advised Mr. Platkin -- I think, if I'm remembering correctly what you just said a few minutes ago -- that it would be untenable to keep Mr. Alvarez in his position? Is that correct?

MR. BERKON: Yes, I don't want to necessarily say *advised*; but I expressed that view to him.

SENATOR WEINBERG: Well, I assume you were speaking to him, as you were called in as the Campaign attorney. So were you not acting as an advisor at that point?

MR. BERKON: Yes, I would say that I was, and Mr. Platkin was representing the official office. But I think it was an exchange of views between counsel. I'm not objecting to the word *advised*; I'm just--

SENATOR WEINBERG: Okay, all right.

So now you have a second discussion with Matt Platkin, and he tells you that Mr. Alvarez is leaving State employment.

MR. BERKON: Correct.

SENATOR WEINBERG: And I guess you knew why, correct?

MR. BERKON: Yes.

SENATOR WEINBERG: Okay, all right.

Now would you tell us about your first conversation with Katie Brennan?

MR. BERKON: So I spoke to Ms. Brennan. We had been e-mailing back and forth, as you saw. She expressed a preference to talk that Sunday, because she had a busy day the next day, on Monday. We spoke --

I think it was late in the afternoon -- and I conveyed to Ms. Brennan that Mr. Alvarez -- the update that Mr. Alvarez would be leaving the government.

SENATOR WEINBERG: And when she asked you the background, you said to her -- when she asked you the reasons for Mr. Alvarez's leaving, what was your answer?

MR. BERKON: It may not have been in that first call; it may have been in the second call when she asked me that. Again, I'm not 100 percent sure. I basically told her that I did not think I could go further than saying that he was leaving the government.

SENATOR WEINBERG: Well, you knew the reason, correct?

MR. BERKON: Yes, I knew the reason; and what I would say -- "but four cents;" meaning that the only reason that there would be pressure on Mr. Alvarez to leave the government was because of Ms. Brennan's allegation. The reason why I didn't feel like I could go further is because my concern was I would then be making what amounted to a legal, or quasi-legal representation as to why he is leaving; meaning that he would -- that it would be suggesting that he was being terminated for cause or anything like that.

So I felt that saying he was leaving was simply a factual representation, and something that was obviously of interest to Ms. Brennan. But going beyond that was kind of going beyond my scope.

SENATOR WEINBERG: Well, did you suggest to Mr. Platkin that perhaps he should have a conversation with Ms. Brennan to explain this further?

MR. BERKON: As you saw from the text messages, Mr. Platkin and I remained in touch. I don't think I ever made that suggestion to him.

SENATOR WEINBERG: Okay, so this was being discussed. There was an e-mail to the Governor, with copies to the Governor's scheduler-- Oh, pardon me. I don't want to get the two e-mails mixed up.

Katie Brennan sends an e-mail to the Governor; the Governor answers her -- we all know what that says -- and copies his scheduler. Then an e-mail goes out to you and to Matt Platkin. So there are several people who are -- at least two people, if not more -- who were discussing a rape allegation. And the only one who it seems to be kept confidential from, in terms of what's going on, is actually the victim.

You don't have to answer this; it's my editorial comment. Unless you'd like to correct me in any way. (no response)

Okay, you did testify that you'd spoken to Mr. Alvarez -- that you knew Mr. Alvarez; pardon me. Did you speak to Mr. Alvarez at all, from the time you got that e-mail and subsequent?

MR. BERKON: I did not.

SENATOR WEINBERG: Okay.

Did you know, at any point, or did you check up as to when Mr. Alvarez was actually leaving State government?

MR. BERKON: I do not recall doing that.

SENATOR WEINBERG: And did you ever ask?

MR. BERKON: I did not.

SENATOR WEINBERG: Okay.

As the Campaign Counsel-- Let's move back to the Campaign. Did you get any complaints -- that were forwarded to you or came from anybody who worked in the Campaign -- about any kind of particularly troublesome atmosphere in the Campaign, in the environment -- the work environment of the Campaign?

MR. BERKON: I think there were some people who held that view, and there were others who did not.

SENATOR WEINBERG: Well, how did you get the idea that some people held certain views?

MR. BERKON: That there were complaints brought to the attention of Compliance. Those were on an individual basis. And I think there then became a question raised as to whether there was "an atmosphere." I think, in total, there were -- the number of complaints that were brought to me were not atypical for a campaign of this size. So there was nothing-- In any campaign environment there are complaints that are brought to my attention.

SENATOR WEINBERG: So how many different complaints, from different people, were brought to your attention?

MR. BERKON: Again, I don't have my notes in front of me, so I don't-- I would estimate three to five.

SENATOR WEINBERG: Three to five different--

MR. BERKON: Three to five--

SENATOR WEINBERG: --different people? And you think that's pretty typical for a campaign?

MR. BERKON: Yes, of that size.

SENATOR WEINBERG: So does that happen often in campaigns that you are representing -- that you get complaints from campaign workers about the atmosphere in the campaign?

MR. BERKON: Complaints -- HR-related complaints on campaigns are quite frequent, yes.

SENATOR WEINBERG: I'm sorry; I--

MR. BERKON: I'm sorry.

SENATOR WEINBERG: Please repeat.

MR. BERKON: Yes, actually HR complaints in a campaign setting are quite frequent.

SENATOR WEINBERG: Okay; I've been around for a long time. This is the very first time I have ever heard that, Mr. Berkon. But I will bow to your superior knowledge on that respect.

MR. BERKON: And I will also add -- and I think this is a good thing -- that the number of complaints in recent years is increasing. And I don't think that's because the bad behavior is increasing; I think it's because there's more of a comfort level for coming forward and bringing those complaints to leadership's attention. And that's true across the board.

SENATOR WEINBERG: What about the general quality of the three to five different people? Were they mostly women, by the way?

MR. BERKON: Yes.

SENATOR WEINBERG: Okay. And what about the quality of those complaints?

MR. BERKON: I think the quality of the complaints-- I mean, if you want to give me a little bit more specifics, in terms of--



SENATOR WEINBERG: Well, did you think they were-- You said you think this is sort of normal. I've been in a lot of campaigns -- statewide, local -- and I know people, sometimes, you know, eat too much junk food, and go without enough sleep, and might start hollering at each other. But when it comes to complaints about sexual harassment or an environment that exists, did you think they were complaints that needed investigation?

MR. BERKON: So let me be clear about one thing. The complaints -- the three to five -- were not about sexual harassment.

SENATOR WEINBERG: Okay. Can you tell me what they were about generally?

MR. BERKON: Yes, I would say that they were regarding management style. They were regarding exchange of words; they were regarding the schedules that people had to keep; they were regarding empowerment with respect to decision-making. They kind of ranged-- I think they had a range that, again, to me, is fairly typical of the campaign. I do not recall -- and again, I don't have my notes in front me -- I do not recall any other complaint regarding sexual harassment in the Campaign.

SENATOR WEINBERG: So there were no complaints regarding sexual harassment?

MR. BERKON: I do not remember any complaints regarding sexual harassment.

SENATOR WEINBERG: Okay. About an atmosphere that might be unfair to one gender or another? No complaints about that?

MR. BERKON: Well, again, I think the two are very different from one another. At least, we have to keep them separated.

The complaints about if, you know, women -- A complaint that a woman doesn't have the same ability to make decisions within a campaign is a very common complaint that we get in campaigns. And I think that's true, because it's a common complaint not only in campaigns, but a common complaint in law firms and businesses across the country.

And those are complaints that we take seriously and try to foster a response to. But obviously, a different nature and a less acute nature than a complaint of sexual harassment, which involves one individual; rather than something that, frankly, I think is systemic.

SENATOR WEINBERG: Okay; yes, thank you for that; because perhaps my choice of words wasn't -- didn't capture what some people felt might have been going on there.

Were there written reports on these complaints, either sent to you in writing or your response back to whoever made the complaints in writing? Do you have any files on them?

MR. BERKON: I believe that there was at least one such written report--

SENATOR WEINBERG: Okay, now--

MR. BERKON: --and there may have been more. Again, I don't have my -- I have not checked the files for them.

SENATOR WEINBERG: Okay. Did the Campaign have personnel policies, or any training policies for the management of the Campaign?

MR. BERKON: We did have an employee handbook.

SENATOR WEINBERG: And was that given to every employee?

MR. BERKON: It should have been.

SENATOR WEINBERG: Okay. If we don't, may we have a copy of that?

MR. COHEN: We'll take that under consideration. We, of course, want to cooperate in every respect; but we're just getting the request now. If you can give us time to check for that document and make sure we can provide it, then we'll do our best to get it to you as soon as possible

SENATOR WEINBERG: Well, hopefully, the employment policy will include any harassment policies. So I would assume if it was passed out or distributed to everybody in the Campaign, that you would be able to get a copy of it to us in a timely manner. So we would appreciate that.

MR. COHEN: We'll check into that.

SENATOR WEINBERG: Okay.

MR. COHEN: I need to see what's available, and what we can provide. But we would like to cooperate, as I mentioned.

SENATOR WEINBERG: Okay.

Now, when you talked to us about Mr. Long -- I guess who was responsible for the day-to-day operations of the Campaign -- did you talk to him about any of these complaints that came to your attention?

MR. BERKON: Are you referring to the complaints that we were aware of during the Campaign?

SENATOR WEINBERG: Yes.

MR. BERKON: Yes.

SENATOR WEINBERG: Okay. And did you get back to any of the Campaign workers who lodged the complaints?

MR. BERKON: Yes.

SENATOR WEINBERG: So they got answers to whatever their complaints concerned.

MR. BERKON: I think they got the resolution of the complaint, to the best of and the fairest judgement in our sense. I'm not sure that they would all agree that they got everything that they were looking for; all the answers they wanted. But there would have been resolution.

SENATOR WEINBERG: Were you involved at all with Mr. Joe Kelley and some of the issues that were raised in the Campaign around his particular behavior?

MR. BERKON: I was.

SENATOR WEINBERG: You were?

MR. BERKON: Yes.

SENATOR WEINBERG: And could you tell us about that?

MR. COHEN: Can you explain what you mean by "tell us about that"?

SENATOR WEINBERG: About what he said -- what Mr. Berkon just said. He was involved with Mr. Kelley -- about some of the issues that arose during the Campaign. Which is not confidential; they've been in the press.

MR. COHEN: I just want to make sure he can answer your questions.

SENATOR WEINBERG: Sure.

MR. COHEN: Are you asking for a description from him as to what his involvement was?

SENATOR WEINBERG: What his discussions were with Mr. Kelley, yes, concerning personnel issues in the Campaign; not campaign strategy, personnel issues.

MR. COHEN: Can we have one moment, please?

SENATOR WEINBERG: Sure.

(witness confers with Counsel)

MR. COHEN: You're raising something new that hasn't been brought up before, nor that you made requests for information about. So this is coming to us out of the blue. I apologize; we, of course, want to cooperate.

Mr. Berkon will be happy to talk broad outlines about discussions and involvement; but not about content, not at this time.

SENATOR WEINBERG: Okay, I appreciate that, and I appreciate his willingness to speak in broad outlines.

And just let me point out for a moment -- and then I see Mr. Critchely is dying to press his red button there (laughter) -- but the reason I got into this questioning is that there were news reports today about somebody who is resigning from State government because of alleged retaliation, which goes back to whistleblowing during the Campaign. So it has a direct -- in my humble opinion -- roadway. So that's the reason I asked the question.

MR. COHEN: No, and I understand that. And again, I want to be careful that we're talking on the same--

SENATOR WEINBERG: Okay; before you do--

Mike, do you have something

MR. CRITCHLEY: Counsel, just a question.

When you say context, could you please explain so we understand what you mean by that? Are you asserting privilege, or are you just saying, at this moment in time, I can't answer the question?

MR. COHEN: Both. We haven't had -- I haven't had an opportunity to talk to Mr. Berkon about this. He hasn't had an opportunity to refresh his recollection. But we want to help you out.

MR., CRITCHLEY: Do you want to take 5 or 10 minutes to discuss it? We'll give you a break.

MR. COHEN: We would; thank you.

(Committee recesses for 10 minute)

SENATOR WEINBERG: Mr. Berkon, we took a break for the two of you to confer.

MR. COHEN: So if I may--

SENATOR WEINBERG: Sure.

MR. COHEN: We, of course, want to clear up any misunderstanding that the Committee may have as to this point. But our understanding is that this line of questioning goes beyond the resolution creating the Committee. And we're just not prepared to talk about it right now.

But we're happy to engage in a follow-up discussion to try to get through this.

SENATOR WEINBERG: Okay. I appreciate that, and I respect your having reviewed the resolution that I guess put us into business here.

And I think I went into that line of questioning because of the news that was all over the newspapers today, concerning somebody -- a

woman who resigned from State employment -- which is in our bailiwick -- because, according to news reports -- alleged -- she was somehow retaliated against for having spoken up about a Campaign matter.

And you don't have to answer anything further on that, unless you choose to.

MR. BERKON: Yes, and just to correct the record-- And again, I glanced at that article yesterday. My understanding is that the complaint that she raised was not during the Campaign, but was during the Transition.

SENATOR WEINBERG: Okay.

MR. BERKON: And again, I could be wrong about that; but I just want to-- I'm not sure that actually occurred during the Campaign.

SENATOR WEINBERG: Okay. And you might be right; I might have confused it. But in any event, we respect your input on this.

Can I-- I won't refer specifically to the Campaign here. But really, in your expertise, Mr. Berkon, because it's an issue that we are dealing with legislatively, do people in campaigns generally -- and you don't have to talk about the Murphy Campaign -- have to sign a nondisclosure agreement?

MR. BERKON: I would say that it is fairly common in campaigns that the employee handbook that is issued to campaigns will have some kind of confidentiality provision as part of it.

SENATOR WEINBERG: But not necessarily a nondisclosure agreement that needs to be signed.

MR. BERKON: There's usually an acknowledgement form when you receive an employee handbook. And that confidentiality is

usually part of it; it's probably not the kind of broad NDA that's often discussed in the news or anything like that. But there are some confidentiality provisions, typically, as part of that employee handbook.

SENATOR WEINBERG: Okay, thank you.

All right, I have no further questions.

ASSEMBLYWOMAN PINTOR MARIN: Good afternoon, Mr. Berkon.

MR. BERKON: Good afternoon.

ASSEMBLYWOMAN PINTOR MARIN: I just have a few questions.

So you stated that when you first spoke to -- when you first saw the e-mail, you spoke to Mr. Platkin, because that's your normal course of business that you take. And it wasn't at that first conversation -- was it at that first conversation that you first learned Ms. Brennan was allegedly raped by Mr. Alvarez? Or was it your second conversation with Mr. Platkin?

MR. BERKON: It would have been the first conversation.

ASSEMBLYWOMAN PINTOR MARIN: So did Mr. Platkin authorize you to tell Ms. Brennan that he would be -- that Mr. Alvarez would be separating from his place of employment?

MR. BERKON: Yes, I did check with Mr. Platkin on the phone that I could convey that information.

ASSEMBLYWOMAN PINTOR MARIN: Is there any indication, that Mr. Platkin gave you, of there was a timeline that was given to Mr. Alvarez when he would be separating himself?



MR. BERKON: As I indicated earlier, I don't recall there was ever a specific timeline.

ASSEMBLYWOMAN PINTOR MARIN: So after those conversations, and after you spoke between Matt Platkin, and Ms. Brennan -- and you told her all of this -- were there ever any follow-ups between you and Mr. Platkin?

MR. BERKON: Not after-- I think I had one final conversation with Mr. Platkin after my final conversation with Ms. Brennan. But after that, there was no follow-up until the *Wall Street Journal* story started breaking.

ASSEMBLYWOMAN PINTOR MARIN: So in your last conversations with Mr. Platkin, when he told you that, you know, Mr. Alvarez was probably going to be separated from his employment, you had no further follow-up conversations whatsoever?

MR. BERKON: Not between -- after that final conversation, and when the *Wall Street Journal* story started breaking.

ASSEMBLYWOMAN PINTOR MARIN: Mr. Berkon, you stated, initially, in a question that the Senator asked you, that your client is, essentially, Governor Murphy, correct?

MR. BERKON: In this capacity, I saw myself as actually serving on behalf on Governor Murphy's Campaign, Murphy for Governor.

ASSEMBLYWOMAN PINTOR MARIN: So at that point, when you're aware that there were two individuals who were working for the Administration, and you represented the "Campaign," which is, essentially, now Governor Murphy, you didn't think it was responsible of

you, as an attorney, to tell the Governor that this was going on under his Administration, and that possibly could cause problems?

MR. BERKON: So just a couple of points.

Just on the entity-- I mean, Murphy for Governor is its own legal entity. So there is a significant legal distinction between Governor Murphy and Murphy for Governor Campaign, notwithstanding the many similarities.

On the second point, my view of it was that, ultimately, the remaining action that needed to be taken -- which was Mr. Alvarez's departing the Administration -- was an action for the Administration to take. You know, obviously, Mr. Platkin was aware of it, and I did not feel it was my place to insert myself and inform the Governor; but that to the extent that that communication needed to happen, that that would have to happen on the Administration side.

ASSEMBLYWOMAN PINTOR MARIN: I think we all understand that those are separate entities; but yet, now it's very complex because they are all intertwined. So at no point, in you knowing that you did represent the Campaign; that potentially these actions happened during the Campaign; that now the Governor, who you represent the Campaign for, sent you an e-mail -- right? -- with someone who contacted him on a sensitive matter--

So none of these raised a blaring red flag -- that you should have picked up the phone and had a conversation with the Governor, who hired your firm to protect him during the Campaign and advise him during the legal issues? Like now, something that had occurred during the Campaign had spilled on to the Administration?

MR. BERKON: Yes, a couple of points there.

I mean, my ultimate-- In the beginning, it was Ms. Brennan's reference to the Campaign, which is why I reached out. By the time I had concluded my three conversations with Ms. Brennan, it was my view that there was no Campaign action to take. Mr. Alvarez was not an employee of the Campaign; Ms. Brennan, also, had not been an employee of the Campaign. And typically, a campaign, as the-- It's stick in these matters is a personnel stick -- the ability to terminate, discipline, suspend, or otherwise sanction an employee. And Mr. Alvarez was no longer an employee of the Campaign.

So it was my view that whatever communications to the Governor should or shouldn't have taken place, should take place in the Administration side, and not on the Campaign side.

ASSEMBLYWOMAN PINTOR MARIN: Okay, so you didn't contact the Governor. At any point during your conversation with Mr. Platkin, did you advise him that, potentially, the Governor should know of what's going on, and what these allegations are, and what they could become?

MR. BERKON: I do not recall discussing informing the Governor with Mr. Platkin.

ASSEMBLYWOMAN PINTOR MARIN: No, I meant did you not discuss with Mr. Platkin--

MR. BERKON: Oh, I'm sorry. What I meant to say is I do not recall having a discussion with Mr. Platkin about communicating this to the Governor.

ASSEMBLYWOMAN PINTOR MARIN: Did Mr. Platkin ever tell you that there was a separate background check that was done on him, once they had discovered what was going on? Anything that would allude to the fact that they were concerned?

MR. BERKON: I have no doubt they were concerned, because I think, as you know, I indicated earlier we had-- I think we both agreed that something had to be done; that he needed to leave the State government. I was not aware of -- I don't recall ever getting into the details of the background check or all the details that have come out since. I don't think we ever got to that level of detail.

ASSEMBLYWOMAN PINTOR MARIN: So this whole time, that was it? No follow-ups; no regard for what was going on now as part of the Administration, of things that had happened in the Campaign, but have now trickled down to the Administration? Just separation from employment, and that was it?

MR. BERKON: That was what we had discussed doing, yes.

ASSEMBLYWOMAN PINTOR MARIN: But again, no more follow-ups on your end?

MR. BERKON: There was-- After my last conversation with Mr. Platkin at the end of June, we did not have any further discussion about this until the *Wall Street Journal* story.

ASSEMBLYWOMAN PINTOR MARIN: So were you surprised, then, once you found out that Mr. Alvarez was still working for the Administration past June?

MR. BERKON: When I learned that Mr. Alvarez was still working for the Administration on October 2, when Kate King informed me, I was surprised, yes.

ASSEMBLYWOMAN PINTOR MARIN: At that point did you see that there was a problem?

MR. BERKON: Yes.

ASSEMBLYWOMAN PINTOR MARIN: At that point, did you have conversations with anyone else as to, "We had discussed this in June"? Maybe asking the question, "Why wasn't anything done between June and October?"

MR. BERKON: I mean, I think the problem resolved-- The proposed solution in June, as I understand, happened essentially immediately that same day, on October 2. I believe Mr. Alvarez resigned that same day, if I'm correct, or the next day.

ASSEMBLYWOMAN PINTOR MARIN: So you think -- that's what your assumption was, correct?

MR. BERKON: I mean, I think I was told that, in fact, he had resigned October 2 or October 3; or it was made public somewhere around there.

ASSEMBLYWOMAN PINTOR MARIN: I was referring to June; I'm sorry.

MR. BERKON: Oh, I'm sorry about that--

ASSEMBLYWOMAN PINTOR MARIN: --if I was unclear on that.

MR. BERKON: I'm sorry; could you just re-ask the question?

ASSEMBLYWOMAN PINTOR MARIN: I was just still wondering, you know, if you were told in your conversations that this would be happening imminently -- I'm just surprised that there was no other follow-ups. It seems like it's just unfortunately been a trend that there was no follow-ups done on any recourse throughout Ms. Brennan's stages in government. So that was my question to you.

MR. BERKON: Yes, I mean, again, I do not recall having any conversations with Mr. Platkin in July, August, or September about this.

ASSEMBLYWOMAN PINTOR MARIN: Thank you, Mr. Berkon, That's all the questions I have.

MR. BERKON: Thank you.

Senator Ruiz.

SENATOR RUIZ: Thank you, Madam Chair.

SENATOR WEINBERG: Yes, but just before -- just let me clarify, and then we'll go to Senator Ruiz.

Because I'm unclear about the Assemblywoman's, my Co-Chair, question and your answer.

In June, you understood that, somehow, Mr. Alvarez was going to be leaving State employment, right?

MR. BERKON: Correct.

SENATOR WEINBERG: Okay. You had no conversations after that?

MR. BERKON: Not as-- Mr. Platkin and I had a conversation after my last conversation with Ms. Brennan. And then I do not recall having any conversations with him about this matter until the *Wall Street Journal* story started to break.

SENATOR WEINBERG: Okay, so you were under the impression somehow he would be gone in June.

MR. BERKON: I don't want to say I was under the impression he would be gone in June, per se; but as I answered the Assemblywoman's question, I was definitely surprised that he was still there on October 2.

SENATOR WEINBERG: Okay, all right. That clarifies it.

Senator Ruiz.

SENATOR RUIZ: Thank you, Chairwoman.

And I don't want to stay on this same thing, but I have to stay on the same thing. One Chairwoman asked you -- you were under the impression, on June 1, that he would resign. You responded -- and then correct me if I'm wrong -- that, yes, you were under the impression that some type of separation occurred on that -- in that June time period.

The second Chairwoman just asked you, and you said you were unaware until the article.

Can you just -- let's focus-- I just want to home in on this for one second, because then I'm going to have some follow-up questions.

MR. BERKON: Yes, absolutely.

So once I had the conversation with Mr. Platkin, which would have been on June 1, and then by June 7, when I told Ms. Brennan I had an update, I think that was the day Mr. Platkin told me that Mr. Alvarez would be departing the Administration. So I think that's the first point.

There was no timeline set forth during my conversations in June. I was definitely under the impression that it was going to move at a reasonably fast pace; so I was surprised when, on October 2, I got an e-mail from Kate King from the *Wall Street Journal* saying, basically, you know,

that Mr. Alvarez is still working in the Administration. That came as a surprise to me.

SENATOR RUIZ: As an attorney, I would suspect that as part of your casework -- and this is not necessarily a case, but you do have a client, so I would consider it an open case -- that you asked for documentation. Did it -- would you not, during this time frame, have requested a letter of resignation, some letter of termination, any follow-up documents to be sure that on your end -- because you received an e-mail from the Governor -- that the loophole was closed; that your workload was completed.

MR. BERKON: My view, at the end of June, was that this was a matter that the Administration was handling, and that there was no further action for the Campaign itself to take.

So certainly, if there had been no Administration, and this had been -- had gone on during the Campaign, absolutely, it would have been, you know, entirely my responsibility. And I hope, following protocol, I would have done all that to make sure that, in fact, termination had taken place.

My view was that, again, there was nothing further for the Campaign itself to do; that the Administration was well aware of all of the facts, and that they were going to proceed with Mr. Alvarez's departure.

SENATOR RUIZ: I understand that. But the allegation happened during the Campaign, which still keeps you somewhat in the mix here. And because I feel that you are passing the baton, wouldn't you have required some kind of an e-mail or a document to say, "My portion is completely completed. This individual has been asked to leave, or has



submitted a letter of termination,” so that then you-- ”It is completely resolved; case closed” for a lack of being corny.

But I mean, the Governor sends you an e-mail directly. I would suspect that that imposes on you some sense of responsibility to go from A to Z; and not until you get to Z and it’s fully completed or closed do you feel that you should walk away from this. Not with an assumption, because that would not make a very good attorney -- to just close a case on an assumption. But to close a case on actual facts.

MR. BERKON: Yes; I mean, you know, look, these are all very, very fair questions. And, you know, a fair question, and perhaps it’s something I should have done, and in retrospect that’s probably something that would’ve made all this proceed in a much smoother way.

Again, my view -- sometimes when you deal with these campaign and official matters, you essentially do -- to use your phrase -- hand off the baton. And obviously I have known Matt Platkin for a while and have great trust in him. And so I thought, you know, basically, that the matter was proceeding. But your questions and criticism are fair.

SENATOR RUIZ: I appreciate your honesty, and thank you.

SENATOR WEINBERG: Next.

ASSEMBLYWOMAN PINTOR MARIN: Just before we move on, just one quick--

How often did you speak to Mr. Platkin from June to October? Any other time?

MR. BERKON: Probably. You know, it’s not frequent; maybe every month, every two weeks.

ASSEMBLYWOMAN PINTOR MARIN: Okay; and still no follow-up.

MR. BERKON: There was no follow up.

ASSEMBLYWOMAN PINTOR MARIN: Thank you.

SENATOR WEINBERG: Okay; any other questions?

Senator Oroho.

SENATOR OROHO: Thank you, Madam Chair.

Mr. Berkon, thank you very much for being here.

Mr. Alvarez was an employee of the Campaign, correct?

MR. BERKON: Correct.

SENATOR OROHO: Okay.

That evening -- when you spoke on Friday, June 1, you mentioned that evening -- do you recall who reached out to whom? Did you call Mr. Platkin, or did Matt Platkin call you?

MR. BERKON: I don't remember who reached out to whom.

SENATOR OROHO: But it was pretty much right away.

MR. BERKON: It would have been within 60 to 90 minutes.

SENATOR OROHO: Okay.

As part of that conversation -- now we know that Mr. Alvarez was an employee of the Campaign. The allegation occurred during the Campaign. You, as the Counsel for the Campaign, through-- Was there any discussions that you may have had with Mr. Platkin, or anybody else, about any investigations that were occurring about the allegations?

MR. BERKON: I'm sorry, I don't quite understand the question.

SENATOR OROHO: Were you -- did you ask if any investigations had occurred to determine if the allegations were correct?

MR. BERKON: I'm sorry, so you're referring to -- did I ask whether there were any Administration investigations that were--

SENATOR OROHO: Or any kind -- by the Administration or any other entity.

MR. BERKON: Yes, I mean, in our initial call -- and again, I'm trying not to read back into that day what I have since learned in reading through the reports--

SENATOR OROHO: Right.

MR. BERKON: --I do think Mr. Platkin mentioned that it had gone to the police, and that they had decided not to bring charges. I don't recall whether he also got into some of the other steps -- you know, referrals that I have since known took place based on news reports.

SENATOR OROHO: Part of your conversation with Matt Platkin that evening, on June 1, or when you got the e-mail from the Governor, as being the Counsel for the Campaign -- were you concerned at all about legal action that would happen against the Campaign for an act that happened during the Campaign?

MR. BERKON: I mean, my view of it is that -- the reason we reached out was because of the placement and time during the Campaign. And, right, obviously when Mr. Platkin told me what happened, there was a strong inclination that that is what I was also going to hear from Ms. Brennan. Obviously, Ms. Brennan could have also raised other issues that occurred during the course of the Campaign as well. She did not.

You know, my view of the matter is that this particular incident, because it was not at a Campaign event, she was not a Campaign employee, she did not raise it to the Campaign during the time period of the Campaign, so no one in the Campaign was aware of it -- you know, it was not top of mind, dealing with any potential legal action.

SENATOR OROHO: Are you or your firm currently representing the Campaign?

MR. BERKON: We do currently represent the Campaign.

SENATOR OROHO: Thank you.

No further questions.

SENATOR WEINBERG: Assemblywoman McKnight.

ASSEMBLYWOMAN McKNIGHT: Just for clarity, because this Committee is to ensure that we have proper processes and protocols in place.

So Katie sends an e-mail to the Governor, with the subject line "Sensitive Matter." Then you get an e-mail -- you and Matt -- from the Governor, and you have a conversation with Matt. Then you reached out to Katie.

Can you explain to me, when you called her, what was that conversation?

MR. BERKON: Yes. So the back-and-forth was -- I originally reached out the day after talking to Mr. Platkin; so that would have been Saturday, June 2. Her initial response to me was, "Let me check with my lawyer; I'll get back to you." So that's kind of like -- that was where we stood.

In the intervening time period, that was when, kind of, Mr. Alvarez's leaving the government -- that was concluded that that was going to happen.

And then I e-mailed Ms. Brennan back, saying, "I have an update." She e-mailed me back and said -- and I'll just read from it, because I think it's actually helpful.

And she says, "My attorney's out of the office this week. However, I am happy to have an initial phone call, today or this weekend, to hear the update. We can schedule a follow-up call if need be."

So the initial call, then, focused on the update, which was Mr. Alvarez leaving the Administration.

ASSEMBLYWOMAN McKNIGHT: So my question to you is, in reference to this "sensitive matter," did you ask Katie what the "sensitive matter" was? Or did you assume that it was in reference to Al?

MR. BERKON: Yes, I mean, look, I think -- and I know Ms. Brennan has testified to this, and I honestly don't remember the sequence of things -- I think it's likely that I shared the Mr. Alvarez information. And if she, then, had additional things that she wanted to share with me and said, "Actually, that's not what I was calling about; I was calling about something else completely," then, you know, she would have raised that. And she did not raise any other issues.

ASSEMBLYWOMAN McKNIGHT: But did you ask her?

MR. BERKON: I don't remember asking her that.

ASSEMBLYWOMAN McKNIGHT: Okay. Because just in reference to, you know, policies and procedures, to have a conversation with someone and just assume that it's in reference to Al, and not get

confirmation that her e-mail was in reference to that, is, you know, very startling.

You know, and as a lawyer, documentation and transparency are key; because this conversation could be talking about apples and oranges. But you want to make sure that what you told her in reference to, you know, Al, was the actual reason why she e-mailed the Governor.

MR. BERKON: Thank you.

ASSEMBLYWOMAN McKNIGHT: Thank you.

SENATOR WEINBERG: Senator Cunningham.

SENATOR CUNNINGHAM: Here I am.

MR. BERKON: Sorry about that. (laughter)

SENATOR CUNNINGHAM: You know, this just touches on, a little bit, about what Senator Ruiz was saying, and Senator Oroho.

But, you know, we're living in an environment of *me too*, you know, in which people who have committed acts upon women, or even men, are now being called on the carpet, losing their reputation for things that happened 10, 20, 30 years ago.

It seems to me, in this environment, it's just very difficult for me to understand that, because of the severity of the allegation, that you, as the attorney who was brought into this, felt no other responsibility other than to say, "I recommend," or, "I think that Mr. Alvarez should be terminated." It seems to me that, as an attorney, you would have a greater responsibility here; a greater obligation to make sure that something else was done. Perhaps even if it was just to do your own kind of investigation; but to do something else. This was a young woman who came and said, "I was raped." This is one of the worst things that can happen to a woman.

And to have it treated so lightly by so-called responsible people -- it's just very offensive.

Did you feel that you had done everything that you could as a responsible attorney in this matter, when you walked away?

MR. BERKON: Here's how I looked at it.

When I learned about the news, I conveyed to Mr. Platkin my view that Mr. Alvarez needed to go; which ultimately was, I think, the immediate action that this Administration had the power to do.

And so to some degree I felt like once that had been conveyed, once it had been conveyed back to me that, in fact, it was going to happen-- And I also wanted to be responsive to Ms. Brennan; to speak to her, and speak to her attorney, and be available to do all of that.

So yes; I mean, at the conclusion of all of this, I understood that Ms. Brennan was frustrated because I felt I couldn't go beyond and give her any more information about the circumstances of Mr. Alvarez's departure. But I felt that the immediate thing that had to happen was going to happen. In the end, it did not happen on a particularly quick timetable; and, you know, I understand, therefore, the criticism -- that that should have been checked up on.

SENATOR CUNNINGHAM: If you had this to do over again, what would you do; what would you have done?

MR. BERKON: Look, I think with 20/20 hindsight, ensuring that there had been, you know -- making sure that that departure had taken place. Obviously, it would have been-- It may have had a difference in helping us through the process; it may not have. I mean, ultimately, there are internal dynamics within the Administration that, you know-- Again,

I'm not at work here, and so I don't know what restraints there may have been. But, you know, that criticism that if you checked in, maybe it would have happened quicker; like there's-- You know, I understand that.

SENATOR WEINBERG: Senator Corrado.

SENATOR CORRADO: Good afternoon.

Were you or your firm the Campaign Counsel on the Murphy for Governor Campaign?

MR. BERKON: The firm.

SENATOR CORRADO: So who else in your firm handled this matter, handled the Campaign, besides you?

MR. BERKON: I mean, we could check the records. There were probably a number of attorneys who worked on it since 2016.

SENATOR CORRADO: Can you tell us how your firm came to be Campaign Counsel for the Campaign?

MR. BERKON: We had worked with Governor Murphy on some of his earlier projects. So when he decided to run for Governor, he retained our firm to be the Campaign Counsel.

SENATOR CORRADO: And when did he do that; what time period?

MR. BERKON: It would have been -- he launched the Campaign in, I think, May of 2016. So it would have been that time period.

SENATOR CORRADO: And was this a paid position for your firm?

MR. BERKON: Yes.



SENATOR CORRADO: Where did you send the bills for your services?

MR. BERKON: I would need to check the bills.

SENATOR CORRADO: To see if it was -- if you sent them to Governor Murphy personally, or to the Campaign; do you recollect?

MR. BERKON: Yes; I mean-- Yes, I would just need to check the bills. I don't have that in front of me.

SENATOR CORRADO: Okay; I would appreciate it if you would do that.

Did you bill anyone for the work that you did on the Katie Brennan matter?

MR. BERKON: I would need to check the bills for that.

SENATOR CORRADO: I would ask that you do that, please, so we know.

Who did you interact with most often on the Campaign?

MR. BERKON: I mean, it depends on what facet of the Campaign. In terms of matters like this, Operations, it would have been Rob Long.

SENATOR CORRADO: Were you in New Jersey during the Campaign?

MR. BERKON: I was not.

SENATOR CORRADO: Did you come up periodically to New Jersey?

MR. BERKON: I was not here that often. We also had a local Counsel, Paul Josephson from Duane Morris.

I think I was up here -- I was probably up here at Campaign Headquarters twice, for the Primary and the General.

SENATOR CORRADO: So Mr. Josephson -- he was local Counsel? You would refer a matter to him if something was needed up here?

MR. BERKON: I mean, if someone needed to physically be in the office, then it was more likely that Mr. Josephson would be able to do that. But we, I mean, worked together, so I wasn't like a-- I wouldn't say it was like, you know, local Counsel sometimes are like just someone who does filings. I mean, it was a -- we were both -- our firms were both serving as counsel to the Campaign.

SENATOR CORRADO: And how often did you interact with Mr. Long?

MR. BERKON: Fairly often. I mean, you know, at least several times a week.

SENATOR CORRADO: He was your contact person; I just want to confirm that.

MR. BERKON: On Operations, right? I mean, if there were other matters that related to other aspects of the Campaign, it might be something -- someone different than him. But for Operations, HR, it would be Mr. Long.

SENATOR CORRADO: Who did you actually answer to on the Campaign?

MR. BERKON: I mean, ultimately the manager and the candidate. I mean, that's who, typically, as the Counsel, you answer to on the Campaign; but other people, to varying degrees, as well. I mean,

frankly, all of them are part of the client, and you're answerable to all of them.

SENATOR CORRADO: When you say *manager*, who are you referring to?

MR. BERKON: Brendan was the manager.

SENATOR CORRADO: I'm sorry?

MR. BERKON: Brendan Gill was the manager.

SENATOR CORRADO: Okay. And who were the others who you said you dealt with?

MR. BERKON: It really would have been across the board. I mean, you know, Mr. Platkin was the Policy Director; in the Communications Shop it was -- Derek Roseman was the head of that department. Our Ad Team was Steve DeMicco and Brad Lawrence. They kind of go across the board, you know, to different Campaign departments. But, you know, to some degree, all of them felt like they could reach out to me; it wasn't like I only dealt with one person.

SENATOR CORRADO: You mentioned that there was an employee handbook that was given out. Was it given out to paid employees or volunteers?

MR. BERKON: I would need to check. I think, probably, it was given out to paid employees, but we can verify that.

SENATOR CORRADO: And who would be responsible for handing that out?

MR. BERKON: That would be Rob.

SENATOR CORRADO: Would you be surprised to know that those who have testified so far who worked on the Campaign were not

aware of an employee handbook, code of conduct, or personnel policies during the Campaign?

MR. BERKON: I would be surprised by that.

SENATOR CORRADO: So you're still representing Murphy for Governor, so you never formally separated. Were you part of the Transition?

MR. BERKON: I really did not play a significant role with the Transition. What happens in gubernatorial campaigns is, towards the end, both campaigns start with initial, kind of, transition prep work. So I was involved in that, but I had no formal role with the Transition itself.

SENATOR CORRADO: Have you personally been involved in statewide campaigns before?

MR. BERKON: Yes.

SENATOR CORRADO: And who did you work for in the past?

MR. BERKON: A lot of people. They had to--

SENATOR CORRADO: Just a few.

MR. BERKON: I mean, you know, across the country -- the cycle, in terms of gubernatorial candidates; the gubernatorial candidate in Iowa, or the gubernatorial candidate in Nevada, and Ohio, and Rhode Island, and Pennsylvania, Arizona; a bunch more.

SENATOR CORRADO: And I know that from reading -- I checked on the website -- a little bit of information about your firm -- and your firm kind of takes credit for creating the *Political Law Group* idea. Is that correct?

MR. BERKON: You'd have to ask the people who are taking credit for that. (laughter) It happened before my time.

SENATOR CORRADO: I believe they said that they were the creator.

MR. BERKON: Okay, I'll--

SENATOR CORRADO: Back in 2016, on the website.

MR. BERKON: No, it wouldn't have been-- Oh, the--

SENATOR CORRADO: The particular department that you work in -- you're a partner in the Political Law Group, correct?

MR. BERKON: Yes, but it's been around well before 2016.

SENATOR CORRADO: You stated before that you've known Mr. Platkin for a while, and you trust him. Can you tell us when you first met him?

MR. BERKON: It would have been-- He was also doing work for New Way for New Jersey, so it would have been 2015.

SENATOR CORRADO: Okay. But you've testified that Mr. Platkin was not your client; the Governor candidate at the time, or the Murphy for Governor Campaign, was actually your client.

MR. BERKON: The *entity* is the client; and then, to answer your question, in terms of who within the client I would answer questions for, Mr. Platkin was one of them. He was the head of the Policy Department, or whatever his title was. So that was a reasonably high level Campaign official.

SENATOR CORRADO: When you spoke with Mr. Platkin on June 1 and learned that the "sensitive matter" was actually a rape allegation, did you think you had an obligation to tell your client Phil Murphy?

MR. BERKON: I felt that it was best served to have both counsels try to deal with it. Again, like, it was to me -- I reached out because of the reference to the Campaign; but it was not apparent that this was actually a Campaign matter. So I think this was a question that there was, to some degree, for lack of a better term, some level of dual jurisdiction over it.

SENATOR CORRADO: I just want to go back. Did you say it *wasn't* a Campaign matter, or it *was*?

MR. BERKON: No, what I said was that when Ms. Brennan's e-mail referenced that it happened during the Campaign, that is why I, as Campaign Counsel, reached out. Ultimately, in terms of the actions to be taken, there was no Campaign action to be taken. So in the end, I'm not sure that, frankly, you know, had I not been involved -- I'm not sure that this would have proceeded any differently. But, like, at the time when Ms. Brennan sent her e-mail, that was not clear.

SENATOR CORRADO: Are you familiar with the New Jersey Rules of Professional Conduct?

MR. BERKON: I am not.

SENATOR CORRADO: If you don't mind, I'm going to read to you -- it's the Rules of Professional Conduct 1.4, Communication, paragraph B.

"A lawyer shall keep a client reasonably informed about the status of a matter, and promptly comply with reasonable requests for information.

“C: A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”

Under the Rules of Professional Conduct in the State of New Jersey, do you think you had an obligation to let Phil Murphy know what was going on?

MR. BERKON: I’m not familiar with the Rules, and I would have to look at that to opine on it.

SENATOR CORRADO: Are you licensed to practice law in the State of New Jersey?

MR. BERKON: I am not.

SENATOR CORRADO: I think we’ve confirmed that you never actually asked Ms. Brennan what happened to her, or her side of the facts.

MR. BERKON: I did not ask her for a recounting of what happened that night.

SENATOR CORRADO: So I’m not sure if you are familiar or watched her testify; but when she testified she was a little surprised that your first statement was that Al Alvarez would be leaving government. You never felt the need to ask her what had happened?

MR. BERKON: I mean, my approach to it was informed by a couple of things. First of all, again, in our e-mail exchange I told her that I had an update, and she said that she wanted to hear what that update was. So I basically then conveyed what that update was.

It’s a fair question; I could have asked her to recount what happened. My take on it was I just -- I had been told that she had made

these allegations. Obviously, if she wanted to come back to me and tell me, and go through what was obviously an incredibly painful and traumatic experience for her and recount those details, I would have gladly listened. But I also didn't want to pretend like I didn't know what was going on and ask her to recount all of this; when, in fact, I had been told, and I had an update for her -- an update that was pertinent for her. So I just decided to be straightforward and honest about that.

I recognize that in reading Ms. Brennan's testimony, that that may have just been personally uncomfortable. And obviously, you know, that was not my intent.

SENATOR CORRADO: Did you go back and read Ms. Brennan's testimony?

MR. BERKON: I did read Ms. Brennan's testimony.

SENATOR CORRADO: How did you prepare for your appearance here today?

MR. COHEN: As to that, we are going to assert privilege, unless you can ask the question differently. Mr. Berkon's preparation for testimony and interactions with me, I'm sure you know, are privileged.

SENATOR CORRADO: I didn't ask what he spoke to you about; I asked if he prepared. I didn't ask if he prepared with you, specifically.

MR. COHEN: Well, you asked how he prepared. And I think you know that probably goes to his interactions with me.

SENATOR CORRADO: Did you review notes for today? You referred to them several times, "I have to go back to my notes." I think you have your notes with you now.



MR. BERKON: Yes, yes, yes.

SENATOR CORRADO: Okay.

MR. BERKON: Yes.

SENATOR CORRADO: And you reviewed other testimony before today as well?

MR. BERKON: I did look at other testimony.

SENATOR CORRADO: The series of conversations you had -- the third phone call with Ms. Brennan and her attorney -- you were asked about the reason Mr. Alvarez was leaving government. And you told her that you couldn't tell her because it was an HR matter. It was an HR matter that was related to you by Mr. Platkin, correct?

MR. BERKON: Correct.

SENATOR CORRADO: You don't work for the Administration.

MR. BERKON: Correct.

SENATOR CORRADO: So why couldn't you tell her what you had been told?

MR. BERKON: It was my judgement -- and Mr. Platkin and I discussed this as well -- that I could go as far as making a factual representation to her about her -- the fact that Mr. Alvarez was leaving. But going beyond and characterizing why he was leaving, you know, was in some sense making a legal representation that, you know, through that kind of process, was something we weren't comfortable doing.

SENATOR CORRADO: Would you agree that you -- if we were to put the e-mails with Ms. Brennan and you, and the text messages between you and Mr. Platkin side-by-side -- that you coordinated your

discussions with Ms. Brennan, or your communications with Ms. Brennan, with Mr. Platkin.

MR. BERKON: Yes.

SENATOR CORRADO: And did he tell you what you should be saying, or--

MR. BERKON: I don't think it was he told me what we should be saying. But we definitely spoke about it, and I wanted to make sure that he was comfortable. I think it was an exchange of information.

SENATOR CORRADO: Did Mr. Platkin ever tell you that he recused himself from this matter?

MR. BERKON: I don't remember whether he told me at the time. I, again, subsequently learned about it; and I just don't remember whether that was something he had mentioned at the time.

SENATOR CORRADO: Do you think you would remember it, since you were having such a series of communications in June?

MR. BERKON: I don't; I mean, I wish I could tell you a certain date. I just don't remember that.

SENATOR CORRADO: Were you surprised when you read that?

MR. BERKON: Again, I don't remember when he would have told me. I guess what you're-- I mean, I probably-- Had he told me at the time, I probably would have been, "Then why are we talking about it?" So that seems more likely that he didn't tell me.

SENATOR CORRADO: And so, in looking back now, it's a little bit surprising that he had recused himself, but had those communications with you in June.

MR. BERKON: Yes; again, I'm not familiar with what *recusal* means for New Jersey government employees. But I understand your question.

SENATOR CORRADO: I believe some of the witnesses have testified that he had a personal relationship with both -- well, *will* testify that that was the reason that he recused himself. First we'll have to hear what his testimony is, but it doesn't make much sense when you look at it now.

Did Mr. Platkin ever discuss an exit strategy for Mr. Alvarez?

MR. BERKON: I don't recall whether we discussed any kind of exit strategy.

SENATOR CORRADO: There was no discussion on where he would be going or how he would leave?

MR. BERKON: I don't remember getting into that level of detail.

SENATOR CORRADO: And the former article -- the former incident was brought up during the Campaign about the chair. And you testified that there were investigations at that time. If there was a complaint, would they come to you or Mr. Long during the Campaign?

MR. BERKON: In first instance, it would come either up through a supervisor to Mr. Long, or it would go directly to Mr. Long. And then he would reach out to me or Mr. Josephson as necessary.

SENATOR CORRADO: Okay. And if there was an investigation, there would be a written report?

MR. BERKON: Not always. I think in some instances there were, but not always.

SENATOR CORRADO: Okay. Did you ever suggest doing an investigation into the allegations that Ms. Brennan had raised against Mr. Alvarez?

MR. BERKON: I did not; I didn't feel that there was any Campaign-level investigation that would have shed more light on the underlying facts. I mean, my view was, given the allegations, he needed to -- he should depart from State government. And that was ultimately going to be, like, the resolution to the matter anyway. So I didn't feel a need-- Obviously, there was a criminal investigation; they have a lot more tools at their disposal than me interviewing two people about what happened on a given night.

SENATOR CORRADO: Did Mr. Platkin ever tell you that there had been a meeting regarding Charlie McKenna, who was Al Alvarez's boss at SDA?

MR. BERKON: I don't remember whether Mr. Platkin mentioned McKenna or how he conveyed to me the departure, since I saw McKenna's testimony. And it kind of makes sense from a timeline standpoint, with the text messages. I don't remember at the time whether he conveyed to me the details of the fact that McKenna was the one who ultimately spoke to Alvarez.

SENATOR CORRADO: Were there any discussions about how Mr. Alvarez was told that he should be leaving, or who was actually handling that?

MR. BERKON: I don't remember any discussions of that.

SENATOR CORRADO: Okay; that's all I have right now.

Thank you.

MR. BERKON: Thank you.

SENATOR WEINBERG: Thank you.

I'm going to call Assemblywoman Lampitt; but again, one point of clarification.

So you -- because it was kind of, a little bit, added to your discussion with Matt Platkin before you called Katie Brennan -- you and Matt Platkin agreed to what you were going to tell her? Did I understand that correctly?

MR. BERKON: I think-- The question I was answering-- If what you're referring to is, did I get approval from Mr. Platkin before conveying to Ms. Brennan that Mr. Alvarez was leaving the Administration, I answered that question "yes."

SENATOR WEINBERG: Okay; did you have any other discussion with Mr. Platkin on what you were going to tell Ms. Brennan?

MR. BERKON: That was really what I told Ms. Brennan, so I'm not sure if there was anything else. I think subsequently, when we had -- when Ms. Brennan pressed on the why, we also had a conversation about the extent to which I could go to explain the circumstances of Mr. Alvarez's departure.

SENATOR WEINBERG: Okay, thank you.

Assemblywoman Lampitt.

ASSEMBLYWOMAN LAMPITT: Thank you, Senator.

Mr. Berkon, you know, I want to go back to November, okay? We haven't really focused about November.

So the Governor wins, and we develop a Transition Team, right? And Justin Braz sat here and said, soon after the Governor won, he

spoke with the Transition Team; he spoke with Raj Parikh -- correct? -- and Pete Cammarano, and informed them about these allegations.

So tell us a little bit about what happens with the legal counsel during the Campaign, and your coordination with the legal counsel during the Transition. At what point in time do you do a hand-off, and how often are you communicating?

MR. BERKON: I had had a limited role towards the end of the Campaign in, kind of, as they were getting ready for Transition. By, I would say, a week or so after the election, I really did not have any role at the Transition.

ASSEMBLYWOMAN LAMPITT: So do you feel, given the fact that Justin Braz provided this information to the Transition lawyer, that the Transition lawyer, Raj Parikh, had a huge misstep in not communicating with you in reference to an allegation that happened during the Campaign?

MR. BERKON: I'm not sure, again, that Mr.-- I mean, again, I'm being repetitive -- but ultimately the role of the Campaign here-- I'm not sure that I would have had a lot to add, again, knowing everything. They had a decision to make about whether to offer Mr. Alvarez a job; and that was the decision before them. And had they come to me, I'm not sure I would have had any -- I wouldn't have had any additional information to the Campaign. I could have given my view, but that would not have been informed by anything I did on the Campaign. That just would have been, you know, the view of another person in the room.

ASSEMBLYWOMAN LAMPITT: So you're talking that, maybe a week or two, you know, in between, was a lag in time that did not

benefit Katie Brennan because during that lag of time there was no communication between a Campaign lawyer and a Transition lawyer?

MR. BERKON: Look, I mean, I guess my point is that they had a decision to make. They could have reached out to me, and that's something to ask Mr. Parikh. But in the end they did not reach out to me.

ASSEMBLYWOMAN LAMPITT: So Mr. Parikh did not reach out to you.

MR. BERKON: Not about that, no.

ASSEMBLYWOMAN LAMPITT: Okay.

Were you surprised to find out that Matt Platkin knew about the allegation in March and did not refer to you? Why did Matt Platkin refer to you in June and not in March? Why did months go by?

MR. BERKON: Because I think, ultimately, the relationship of this matter to the Campaign, in the end, was temporal. And it occurred during the Campaign but, again, my view is it actually didn't have anything to do with the Campaign itself. So I think that is probably why Mr. Parikh didn't reach out to me. It was the reference to the Campaign in the e-mail that is why I think I was included on the forward; and why, ultimately, the decision was made for me to reach out.

I think had those words not been used, I don't think I would have been involved.

ASSEMBLYWOMAN LAMPITT: But Mr. Platkin knew it happened during the Campaign in March, so he needed to see it in writing to be responsive to you, to reach out to you months later then?

MR. BERKON: That's a question to ask Mr. Platkin.

ASSEMBLYWOMAN LAMPITT: And I believe that Senator Oroho, you know, referred to the fact that you are a continued-- Does your law firm continue to represent Phil Murphy on a personal sort of level?

MR. BERKON: I mean, you know, we have represented him in those matters in the past; and, you know, if something were to come up, he could choose to use us again. But that is something that we have done in the past, yes.

ASSEMBLYWOMAN LAMPITT: So Senator Cunningham asked again about what recommendations-- Given what I just conveyed, in reference to the lag of two weeks in November; March, you know, a lag there, in terms of the number of months--

You know, if you were to make a recommendation for a policy change -- which is the reason why we're here; one of the reasons why we're here -- what would your recommendation be in reference to those few weeks of Transition time in November; and communication in reference to something that might have come up -- give it writing, give it verbal?

MR. BERKON: Yes; I mean, look, I think ultimately that is the decision for this Committee to make.

ASSEMBLYWOMAN LAMPITT: But I'm asking you your opinion.

MR. BERKON: Yes; no, I mean, look, my opinion is that if there -- and this is actually not based on personal knowledge, it is based on news reports and what I have learned -- I think having a clearer way to engage in an investigation that is geared towards making employment decisions, as opposed to investigations geared toward criminal decisions -- which I think was something that was referenced earlier in the witness



testimony of Mr. Garg -- would probably have resulted in a faster decision not to hire, or a faster termination.

ASSEMBLYWOMAN LAMPITT: Thank you.

SENATOR WEINBERG: Assemblywoman Muñoz; and then I don't know if you want to take a quick lunch break.

MR. BERKON: I'm fine to keep going.

SENATOR WEINBERG: Okay; Assemblywoman.

MR. BERKON: It's up to you guys.

ASSEMBLYWOMAN MUÑOZ: Thank you.

One of my questions is, why were you the person selected to make the phone call to Katie Brennan?

MR. BERKON: So, again, I think it was because the words-- There was a reference to the Campaign in the e-mail. And so, ultimately, that is the reason why I think I was involved in the first place.

And given-- Again, when I first get that e-mail, I had no idea what it was in reference to. But there is something saying "during the Campaign." So at that point it's naturally, definitely, me to reach out.

Once we learn -- or once I learn that this is a matter that has, you know, has certainly had some airing already within the Administration, I think it became a question as which direction to go in for sure. But ultimately, I think the reference to the Campaign is why we decided that I made that call.

ASSEMBLYWOMAN MUÑOZ: Well, then if it was, therefore, regarding the Campaign, then you followed up by stating, "Well, then I had no further work on this issue. I decided that I would have no

involvement, because I was no longer with the Campaign.” But you just stated that it was *with* the Campaign.

And then you also-- It was a curious comment that you made; you said that you had “No further follow-up conversations regarding whether or not Mr. Alvarez was still in the Administration, had left the Administration.” So, you know, I’m always quoting Senator Weinberg about this curious lack of curiosity.

But, you know, you were called to make the phone call. That means that we-- You know, you weren’t all operating in silos; there was an interfacing between Murphy for Governor, and the Transition, and now the Administration. You know, you’re actually presenting to us what I feel is that everybody operated in a silo.

So by your statement, you were asked to make the phone call because it happened during the Campaign -- therefore, the question is why didn’t you, then, over from June until October, make any follow-up questions: Was Mr. Alvarez still at the Administration? This is a serious allegation. This is not somebody, you know, “poked me in the wrong way;” this is an allegation of rape. During the Campaign, you were the Campaign attorney; and yet, you just stated that the reason you were asked to make the phone call was because it happened during the Campaign; and then you stated, “Well, I didn’t do anything further, because it wasn’t in the Campaign.”

So can you explain that to us?

MR. BERKON: Yes, absolutely.

So I will try to make my point more clear.

Ms. Brennan's e-mail references -- talks about an incident that happened during the Campaign. Mr. Platkin then added upon that the information of what he believes she was probably referring to. Because of the language in her e-mail I reached out; so that was like the initial reach-out.

ASSEMBLYWOMAN MUÑOZ: By the time you called her, you had already spoken to Mr. Platkin.

MR. BERKON: No, absolutely. That's why I said I think it could have gone either way. The e-mail itself was -- okay, this is referencing the Campaign; it doesn't reference anything in the Administration.

ASSEMBLYWOMAN MUÑOZ: Who made the decision that you would call, and not Mr. Platkin?

MR. BERKON: It was a joint decision between me and Mr. Platkin.

ASSEMBLYWOMAN MUÑOZ: So did you flip a coin?

MR. BERKON: No, no. I mean, we went back and forth, and said, okay because the e-mail referenced the Campaign, I would do -- I would make the call. It wasn't-- I mean, it was a reasoned discussion back and forth.

ASSEMBLYWOMAN MUÑOZ: But again, that makes me question why you, then, didn't follow up past that point. You said -- you're stating that it was part of the Campaign. So therefore, you know, you have four months where Mr. Alvarez remains in employment; there's no pressure to get him out.

The other thing is, you know, as Assemblywoman McKnight said, your first words were, "Mr. Alvarez is leaving the Administration." How did you know that that was what she was asking you about?

MR. BERKON: Again, I didn't know for certain. It was -- the reason I did it was based on the fact that I-- The impetus for the call was me telling her, "I have an update." And her saying back to me, "Let's have an initial phone call today or this weekend to hear the update."

So my impression was that it would not seem like it was coming out of the blue, based on our e-mails back and forth; but obviously, you know, Ms. Brennan viewed it a different way.

ASSEMBLYWOMAN MUÑOZ: Yes, I feel there's a lot of concern here that you then -- again, these failures to communicate between those three entities: the Murphy for Governor, the Transition team. And as Senator Cunningham said, this is the worst thing that could happen to a person, whether it is a woman or a man. And for you, at every level -- and you're all males -- to fail to communicate, to follow up, to query each other -- you know, "Where -- is Mr. Alvarez still employed here?" "Why hasn't -- why did it take until October 2, with a *Wall Street Journal* article, to get him to finally leave the Administration?" Nobody seemed to ask that question. Can you give us any understanding, from your perspective, why-- Were you troubled by the fact, when you heard on October 2 that he was still in the Administration, and that Ms. Brennan had to, in her day-to-day work, run into Mr. Alvarez?

MR. BERKON: Yes.

ASSEMBLYWOMAN MUÑOZ: Yes, what? You were troubled?

MR. BERKON: Yes; I mean, I was surprised and troubled by it, absolutely.

ASSEMBLYWOMAN MUÑOZ: And during that four-month period, from June until October 2, it never crossed your mind to ask yourself, “Where was Mr. Alvarez today? Was he still an employee? Had he left the Administration?” You never asked that question?

MR. BERKON: As I said, at that point I felt it was the Administration; and that they were moving on it. But, obviously, that didn’t happen.

ASSEMBLYWOMAN MUÑOZ: So in your, like, conscience as a man, as a human being, as a member of our human race, you didn’t ever once during that time say to yourself, “Gee, I wonder if he’s still here?”

MR. BERKON: I don’t know if at any point that crossed my mind.

ASSEMBLYWOMAN MUÑOZ: Thank you.

SENATOR WEINBERG: Okay, Senator Madden, and then Assemblywoman DeCroce; and then we are going to take a brief half-hour lunch break.

SENATOR MADDEN: Hi, Mr. Berkon.

MR. BERKON: Hello.

SENATOR WEINBERG: We did promise Mr. Berkon that we would finish today. He has made the trip up from Washington. So I just want to remind all of you.

SENATOR MADDEN: My questions, I assure you, will be finished today, from my perspective.

In your written testimony, and you testified also, “Mr. Platkin and I decided that it made sense for me, as the Campaign’s lawyer, to reach out to Ms. Brennan, because her e-mail had indicated that the sensitive matter,” -- at this point you know it was an alleged rape -- “had occurred during the Campaign.” So you and Platkin are talking; the agreement is made, the decision made for you to reach out to her.

Your very final sentence there says, “But we agreed to remain in close touch about it.”

So here you are in the evening of June 1; you discuss this; you call Katie the next day. A couple of days go by; a series of back-and-forth communications. And she’s advised Alvarez will be leaving. And there’s no other discussion with Platkin regarding the status of Alvarez, moving forward?

MR. BERKON: I mean, I think from the text message communications, Mr. Platkin and I spoke multiple times throughout June.

SENATOR MADDEN: So--

MR. BERKON: I mean--

SENATOR MADDEN: Could you--

MR. BERKON: I’m sorry.

SENATOR MADDEN: “We agreed to remain in close touch about it.” To me, I’m taking that that you would be seeing this through until there’s a final resolution with Alvarez.

MR. BERKON: Yes, I--

SENATOR MADDEN: But you’re saying that -- if I’m hearing your testimony, “No I told Katie that he would be leaving,” and a little while ago there was a question asked, or posed, to you, regarding your

conversations with Platkin between June and October. Did you have those? You had relied, "Yes, maybe about once a month or every few weeks."

But you never asked or discussed Alvarez, is how you answered that particular question. Is that true?

MR. BERKON: Sorry, which part?

SENATOR MADDEN: The part regarding you never talked about Alvarez again.

MR. BERKON: I do not recall any conversation about Alvarez in July, August and September.

SENATOR MADDEN: So when you testified that you two had agreed that you make the call; however, you would remain close, in close touch on it, what did you refer to? I mean, you put it in writing here. What did you mean by that?

MR. BERKON: Yes, I mean, what I'm referring to is -- again, and I know there are questions about whether this did resolve the matter -- in my mind it was the month of June that we were trying to get at a resolution of this. So that is in reference to the fact that I wasn't going to just call Ms. Brennan and take it -- an investigation of my own. That Mr. Platkin and I were going to communicate regarding my conversations with Ms. Brennan; that is what it is in reference to. And it was at the end of June, ultimately; I did not feel that the Campaign had any further action to take -- that the action was the Administration's to take.

So what I'm referring to there is that I would remain in close touch with Mr. Platkin regarding my communications with Ms. Brennan; and we did do that.

SENATOR MADDEN: When you delivered the message to Ms. Brennan that Mr. Alvarez would be leaving State government, did you have a loose timeframe, a mental timeframe, about what would be a reasonable amount of time that he would be leaving?

MR. BERKON: I mean, again, we did not discuss a timeframe, that I recall, between me and Mr. Platkin. And I also don't think I gave Ms. Brennan any timeframe. I mean, again, in my mind, I was very, very surprised that he was still there by October. I think I would have been very surprised if I had gotten a call from Kate King on August 1. My sense was that it was going to be something handled in a relatively quick timetable. But that was not-- That was just my impression.

SENATOR MADDEN: And what do you think a "quick timetable" would be?

MR. BERKON: I mean, six weeks or so.

SENATOR MADDEN: Okay; thank you.

Thanks, Madam, Chair.

SENATOR WEINBERG: Just before I call Assemblywoman DeCroce, I think I'm going to ask, at some point in the future, for you to give us some input on new policies and procedures here. You, as the Campaign Chair, decided there was no action and no investigation. You just acted as the intermediary. And the State said there was no action they could take because it was a Campaign matter. So somehow Katie Brennan was caught in a very interesting quagmire.

Assemblywoman DeCroce.

ASSEMBLYWOMAN DeCROCE: Thank you.

I'm going to try to do this quickly to get through it.



Does it bother you at all that after everybody had these conversations and it was decided that Mr. Alvarez was going to separate employment from the State, that the only reason he separated, in the end, was because the *Wall Street Journal* was coming out with an article?

So everything you had to say, and Matt Platkin, or anybody else -- obviously nobody pushed it until the *Wall Street Journal* decided that they were going to go to print after Ms. Brennan spoke to them. What do you think about it happening that way?

MR. BERKON: As I indicated, I was very surprised when I learned that he was still working in State government in October.

ASSEMBLYWOMAN DeCROCE: Okay.

A question going back to the Campaign -- you said that you reported to Rob Long.

MR. BERKON: I wouldn't say I reported to Rob Long. He was just like the person who would be responsible for Operations. So he was often my contact for those--

ASSEMBLYWOMAN DeCROCE: Okay.

MR. BERKON: I mean, I don't-- Again, I think, from my standpoint, I am answerable to the organization; and different people at senior levels would reach out to me, and I would provide them with advice.

ASSEMBLYWOMAN DeCROCE: So he was considered senior level.

MR. BERKON: Yes.

ASSEMBLYWOMAN DeCROCE: Okay; so would Ms. Brennan, Mr. Braz, Mr. Alvarez, and Mr. Platkin report to him and deal with him?

MR. BERKON: Again, I'm not sure they would report to him, because they would be in different departments, But if they had, you know, if there was an HR concern, then that would be brought to him, since they are Campaign employees. And I could be wrong here; my understanding is that Mr. Braz is a State Party employee, not a Campaign employee; but certainly Mr. Platkin and Mr. Alvarez.

ASSEMBLYWOMAN DeCROCE: And did you ever have any conversations with Rob Long about this incident?

MR. BERKON: I did not.

ASSEMBLYWOMAN DeCROCE: Do you know where he is right now; where he's employed?

MR. BERKON: He works in the State government.

ASSEMBLYWOMAN DeCROCE: Do you know where?

MR. BERKON: I know -- I think it's maybe-- It's the Department where Lieutenant Oliver works.

ASSEMBLYWOMAN DeCROCE: How about Deputy Commissioner of the Department of Community Affairs? And do you know who reports to that Department?

MR. BERKON: I do not.

ASSEMBLYWOMAN DeCROCE: HMFA, where Ms. Brennan works.

MR. BERKON: I did not know that.

ASSEMBLYWOMAN DeCROCE: And EDA reports to DCA.

Just there's a common denominator that I keep picking up on that's very disturbing. It's almost like a watchful eye was all over Trenton,

watching what was going on; and yet nothing was happening until the newspaper became nosy.

So it's quite disturbing, all of this. And the way a Campaign goes to a Transition, to employment with the State, definitely needs to be looked at, and policies need to be put into place. Because we're really, you know, at the mercy of people lying. And that's very disturbing, not only for people in campaigns, but people who are employed by the State of New Jersey; and, more importantly, the Administration. I think it puts a very bad shadow on the whole Administration, all the way to the top, that a newspaper had to bring this down.

And now we have somebody from the Campaign in a major position -- second in command at a Department of over 800 employees. And Ms. Brennan is a part of that.

So it's all very disturbing to me; but I wanted that on the record.

Thank you.

SENATOR WEINBERG: Thank you.

I would like to take a half-hour break. It's 1:20; we'll get to 1:30, and we'll just take a break until 2 p.m., okay?

Okay, Senator Oroho has one question, now; then we'll go to Assemblywoman Schepisi.

SENATOR OROHO: Thank you, Madam Chair.

Just one quick--

Mr. Berkon, you mentioned that you have a lot of experience with campaigns around and across the country. And we've heard testimony that each one of these -- whether it be the Campaign, or the Transition, or

the Administration -- they're all separate legal entities. It's a big Campaign; lots of money being spent. Are there formal employees' policies and procedures? Are there any, that you know -- normally any kind of insurance policies for liability insurance that these campaigns contract for?

MR. BERKON: Yes.

SENATOR OROHO: Did this Campaign have insurance?

MR. BERKON: I would need to confirm, but I believe that it did, yes.

SENATOR OROHO: Okay. As part of that, was there any discussions because this event occurred? And the Administration is making very clear that it occurred during the Campaign, and that actions of the Campaign did not necessarily fall into the requirement for action by the Administration.

Was there any contact with-- I'd like to know if there was any contact with an insurance company about an event that occurred in the Campaign that might cause liability.

MR. BERKON: I am not aware of one.

SENATOR OROHO: Okay.

Also I'd check to see if there's--

SENATOR WEINBERG: You're over your one question limit there.

SENATOR OROHO: Oh, sorry. (laughter)

Thank you.

SENATOR WEINBERG: Assemblywoman Schepisi.

ASSEMBLYWOMAN SCHEPISI: Do you want me to start it, or do you want to break and then come back?

SENATOR WEINBERG: Okay, all right.

It is 1:23. So at 7 minutes before 2, we'll be back; hopefully by 2 p.m.

MR. BERKON: Thank you.

SENATOR WEINBERG: Thank you.

(Committee recesses)

(Committee reconvenes)

SENATOR WEINBERG: Assemblywoman Schepisi, I think when we left you were next.

ASSEMBLYWOMAN SCHEPISI: Okay; thank you.

SENATOR WEINBERG: Thank you very much for being back on time.

MR. BERKON: Thank you.

ASSEMBLYWOMAN SCHEPISI: And Mr. Berkon, if you'll bear with me. I have a series of questions, just trying to clarify some of the testimony.

Starting with the June 2018 e-mails and your response to Katie Brennan. A couple of questions, just about the language that you used.

In your e-mail, who are you referring to when you say "they"?

MR. BERKON: Which e-mail?

ASSEMBLYWOMAN SCHEPISI: This is your June 7-- Hold on; June 10-- (refers to notes)

It was the very first e-mail that you sent to Katie Brennan on -- the Governor sent to you and Matt Platkin, on Friday, June 1; and you sent a reply to Katie on--

MR. BERKON: The June 2 one?

ASSEMBLYWOMAN SCHEPISI: It was the June 2.

MR. BERKON: Yes.

ASSEMBLYWOMAN SCHEPISI: I'm just trying to find it in my notes -- the exact time that you sent it.

And in the e-mail, you state that, "Hope you are having a good weekend. I was/am the Counsel to the Campaign, and before that, Counsel to several of the Governor and First Lady's other initiatives. They wanted me to get back to you ASAP on your e-mail from Friday."

Who is "they," and who wanted you to get back to her ASAP?

MR. BERKON: I don't know if I am referring there to Platkin, or the Governor, or the First Lady. I mean, obviously, the Governor had e-mailed Ms. Brennan and had said that, you know, basically "ping us if we're not back to you quickly."

I'm just not sure whether I was referring to them or referring to the Administration in the plural. I don't know.

ASSEMBLYWOMAN SCHEPISI: But it was your testimony that you had no communications with the Governor or the First Lady--

MR. BERKON: Correct.

ASSEMBLYWOMAN SCHEPISI: --other than just being forwarded that one e-mail from the Governor

MR. BERKON: Correct.

ASSEMBLYWOMAN SCHEPISI: --at that time.

MR. BERKON: Yes.

ASSEMBLYWOMAN SCHEPISI: Okay.

In June of 2018, who were the employees of the Campaign?

MR. BERKON: The only person who-- I'm not even sure there are any employees left on the Campaign. The only one I am not positive on would be Rob. But I'm not sure if there are any.

ASSEMBLYWOMAN SCHEPISI: And when you say *Rob*--

MR. BERKON: Sorry; Rob Long.

ASSEMBLYWOMAN SCHEPISI: Rob Long.

MR. BERKON: I mean, he is the only one who-- I mean, because he remains the Treasurer or he was the Treasurer -- I mean, he's the one who had to file the reports. So I just -- I'm not sure that there is actually anyone who remains an employee of the Campaign at this point.

ASSEMBLYWOMAN SCHEPISI: Who were the officers in the Campaign?

MR. BERKON: I would have to check the paperwork. I don't have it in front of me.

ASSEMBLYWOMAN SCHEPISI: Were there any officers in June of 2018?

MR. BERKON: Yes; I mean, it's still a corporate entity, so there would be directors and officers. I don't remember who are the directors and officers of the corporate entity.

ASSEMBLYWOMAN SCHEPISI: But as the attorney for a corporate entity, the directors and officers are the people who you would generally report to as corporate counsel, correct?

MR. BERKON: In a formal sense, yes.

ASSEMBLYWOMAN SCHEPISI: Okay. But you don't know who the officers or directors were at that point?

MR. BERKON: I do not.

ASSEMBLYWOMAN SCHEPISI: Do you know who the officers and directors were at any point on the Campaign?

MR. BERKON: I don't remember who the directors and officers were for the Campaign.

ASSEMBLYWOMAN SCHEPISI: Who were--

MR. BERKON: I mean, the Treasurer would have been Rob Long for a period of time, who would have been an officer of the Campaign. But I don't remember who the directors and officers are.

ASSEMBLYWOMAN SCHEPISI: So other than Rob Long, there was nobody else on the Campaign who would have been in charge of Operations, like a CEO, or--

MR. BERKON: At a functional level, the Campaign Manager functions as the Campaign CEO.

ASSEMBLYWOMAN SCHEPISI: And was the Campaign Manager the same person throughout?

MR. BERKON: Yes.

ASSEMBLYWOMAN SCHEPISI: And was there a Campaign Manager in June of 2018?

MR. BERKON: There was not a Campaign Manager in June of 2018.

ASSEMBLYWOMAN SCHEPISI: And just for the record, who are these people?

MR. BERKON: I'm sorry; who are these -- which people?



ASSEMBLYWOMAN SCHEPISI: The Campaign Manager.

MR. BERKON: Brendan Gill was the Campaign Manager.

ASSEMBLYWOMAN SCHEPISI: Okay. And what person would you regularly report to? Was it Rob Long, was it Brendan, was it the Governor?

MR. BERKON: Yes, I mean, I think, to some degree, all of them, depending on the operations. I mean, Brendan was the Campaign Manager; so, ultimately, it's the Manager and the candidate who you, ultimately, report to. But, you know, in the regular course, we were provided by -- as to various department heads within the Campaign.

ASSEMBLYWOMAN SCHEPISI: Where are you licensed to practice law?

MR. BERKON: D.C. and New York.

ASSEMBLYWOMAN SCHEPISI: Okay. How many years?

MR. BERKON: Since 2009, I want to say.

ASSEMBLYWOMAN SCHEPISI: Okay; so coming up on--

MR. BERKON: It could be 2008, 2009.

ASSEMBLYWOMAN SCHEPISI: Coming up on 10 years or so.

MR. BERKON: Correct, yes.

ASSEMBLYWOMAN SCHEPISI: Are you a partner at your firm?

MR. BERKON: I am.

ASSEMBLYWOMAN SCHEPISI: Okay. Are you familiar with the D.C. bar's Professional Rules of Conduct?

MR. BERKON: I am, yes.

ASSEMBLYWOMAN SCHEPISI: Okay. Are you familiar with Rule 1.4, which speaks specifically to communication with clients?

MR. BERKON: If you want to read it back to me.

ASSEMBLYWOMAN SCHEPISI: Okay.

Rules of Professional Conduct, Rule 1.4, Communication. “A: A lawyer shall keep a client reasonably informed about the status of a matter, and promptly comply with reasonable requests for information.

“B: A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

“C: A lawyer who receives an offer of settlement in a civil case or a proper plea bargain in a criminal case shall inform the client promptly of the substance of the communication.”

And then there are comments under -- which specifically delineate what a client is supposed to do; including comment number 2: “A client is entitled to whatever information the client wishes about all aspects of subject matter of representation, unless the client expressly consents not to have information passed on.

“The lawyer must be particularly careful to ensure that all decisions of the client are made only after the client has been informed of all relevant considerations.”

It then speaks to adequacy of communication; what is appropriate information. And then it has a specific provision when withholding information is proper. And that is paragraph 5, and it says, “In rare circumstances, a lawyer may be justified in delaying transmission of

information when the client would be likely to react imprudently to an immediate communication.”

Who was your client in June of 2018?

MR. BERKON: Murphy for Governor.

ASSEMBLYWOMAN SCHEPISI: Okay. Who at Murphy for Governor, as your client, did you communicate with and receive direction from?

MR. BERKON: It really was not -- it was not anyone. I mean, ultimately my determination, as I've said earlier today, was that this was not -- in the end was not a Campaign-related matter. In the beginning, the reason why I was brought in and why we thought it made sense is the reference in the e-mail. But in the end, I did not think that this was a Campaign-related matter by the time we had concluded the review in June. The action here was to be taken by the Administration, and not the Campaign; which is why it was provided -- which is why there was no follow up.

ASSEMBLYWOMAN SCHEPISI: Right; but this was brought to your attention on June 2?

MR. BERKON: Yes.

ASSEMBLYWOMAN SCHEPISI: And on June 2, in your e-mail, you specifically state, per Campaign policy, “I am tasked with hearing from anyone who has a Campaign-related concern,” correct?

MR. BERKON: Correct.

ASSEMBLYWOMAN SCHEPISI: And for the next several weeks you took direction, you had communications, you responded to the

individual making the complaint; because during that period of time there was a belief that it was a Campaign matter.

MR. BERKON: There was certainly a belief about that at the inception of the matter, yes.

ASSEMBLYWOMAN SCHEPISI: Okay. Was Matt Platkin ever your client?

MR. BERKON: He was certainly part of the client at Murphy for Governor during the Campaign.

ASSEMBLYWOMAN SCHEPISI: What was Matt Platkin's role in Murphy for Governor?

MR. BERKON: He was Policy Director; I believe that's his title.

ASSEMBLYWOMAN SCHEPISI: Okay.

MR. BERKON: He was head of the Policy Department.

ASSEMBLYWOMAN SCHEPISI: And during the Campaign, did you ever report to Matt Platkin?

MR. BERKON: I provided advice to Matt Platkin; but again, in the reporting sense, ultimately the Manager is responsible for the department heads, and the candidate is on top of the structure.

ASSEMBLYWOMAN SCHEPISI: So as you were delving through this for the first couple of weeks of June, how were you following Matt Platkin's direction at that time if he was not working for the Campaign; if he was not able to provide that sort of guidance as a client? What authority did he have to guide you through some of this?

MR. BERKON: Yes; I mean, I'm not sure he had authority to guide me through that. I think, again, I came to this as the Campaign

Counsel; he was the official Counsel. And I think we were working together in response to Ms. Brennan's e-mail.

ASSEMBLYWOMAN SCHEPISI: Okay.

Are there currently any employees at Murphy for Governor?

MR. BERKON: I think that was your question earlier, and I don't know the answer to that.

ASSEMBLYWOMAN SCHEPISI: Okay. Are you representing Murphy for Governor in the Katie Brennan lawsuit?

MR. BERKON: We just got the lawsuit yesterday; I don't know.

ASSEMBLYWOMAN SCHEPISI: Okay.

If you had known Matt Platkin had recused himself, who would you have spoken to?

MR. BERKON: I don't know; I don't know who-- If that had been brought-- Again, I don't recall it being brought to me, and I don't remember exactly when I first found out about it. But if what you are asking is if he hadn't been involved who would I have dealt with on the Administration side, I don't know. I don't know who they would have appointed to work with me.

ASSEMBLYWOMAN SCHEPISI: I mean, on June 2, at that point -- it's been testified to by several people before us -- that Matt Platkin had recused himself from this matter.

MR. BERKON: Right.

ASSEMBLYWOMAN SCHEPISI: You've indicated you're not sure when that got shared with you.

MR. BERKON: Yes.

ASSEMBLYWOMAN SCHEPISI: If it had been shared with you on that date, would you have continued having this communication with him and only him?

MR. BERKON: I would think the answer to that question is "no," but again I don't recall when I first learned of it and whether it was during this period or not.

ASSEMBLYWOMAN SCHEPISI: Did Matt Platkin ever work for New Way for New Jersey?

MR. BERKON: I believe that he did, yes.

ASSEMBLYWOMAN SCHEPISI: Okay.

When the Governor sent you the June 1 e-mail, based upon the production that was provided to us, you never even confirmed you received it. Is that normal protocol for you not to respond to a client?

MR. BERKON: It is not normal protocol. Again, I, you know, I was -- I felt that in communicating with Matt I was meeting the need to at least keep that side informed.

ASSEMBLYWOMAN SCHEPISI: What made you go directly to Matt and not even to respond and say, "Got it. We'll look into this for you," -- anything like that. What was the impetus for just going directly and picking up the phone and calling Matt?

MR. BERKON: I mean, I felt that -- before anything could be presented to the Governor, before we could figure out how to get back to Ms. Brennan, you know, he was the other Counsel on the call. So he would have been the one who I -- sorry; on the e-mail. So it was, to me, natural to reach out to the other counsel who was on the e-mail and try to get a better sense of what might be going on.

ASSEMBLYWOMAN SCHEPISI: Was there a call with Matt Platkin and the Governor?

MR. BERKON: There was no call with Matt Platkin and the Governor.

ASSEMBLYWOMAN SCHEPISI: Going back to the original communications with you and Matt, likewise in the production that was provided to us there's no e-mail communications whatsoever between you and Matt Platkin after the Governor's e-mail. Whose decision was it to not correspond by e-mail?

MR. BERKON: I'm not sure there was a decision made. I mean, as you saw we corresponded via text message. So we were corresponding and writing in that regard; and we would talk on the phone.

ASSEMBLYWOMAN SCHEPISI: Okay. Is that standard protocol for something like this?

MR. BERKON: More and more these days (laughter); unfortunately, for my schedule.

ASSEMBLYWOMAN SCHEPISI: Okay.

Now, you've testified several times today that Rob Long was oftentimes your go-to person on any of these issues. Rob Long may have been the only person still remaining at the Campaign, which, at the time, was your client. Did you ever speak with Rob Long about any of this?

MR. BERKON: I don't recall speaking to Rob about any of this until, obviously, in October.

ASSEMBLYWOMAN SCHEPISI: Why wouldn't you speak with him?

MR. BERKON: Again, I felt that in communicating with Matt, who had been involved in this, that we were able to address the concern and work together to try and respond to Ms. Brennan, and to try to bring some resolution to the situation. So, you know, I didn't reach out to Rob. It didn't really go through my head, that I can recall, to do it.

ASSEMBLYWOMAN SCHEPISI: Under whose authority did you believe the power or the ability to convey the termination of a senior-level staffer -- who had worked for the Governor, by your testimony, going all the way back to New Way for New Jersey -- who do you believe had the authority to make that decision?

MR. BERKON: I'm sorry, to make which decision?

ASSEMBLYWOMAN SCHEPISI: For you to convey that he was going to be terminated; or that he was *going* to be terminated?

MR. BERKON: That -- before I had that discussion with-- Well, the decision to terminate was the Administration's decision. And again, I'm not sure if he was terminated or asked to leave. But the decision to separate was ultimately an Administration decision. The decision to inform Ms. Brennan of that decision was something I had confirmed with Mr. Platkin. So I think Mr. Platkin was the one who effectively authorized me to convey that information.

ASSEMBLYWOMAN SCHEPISI: And did you believe that Mr. Platkin had unilateral authority to do that?

MR. BERKON: I don't know about unilateral; but yes, I did believe, as Chief Counsel, that he would have the authority to do that.

ASSEMBLYWOMAN SCHEPISI: Without any discussion with your ultimate client on it.



MR. BERKON: I mean, again, he was being separated from his role with the government, not being separated from his role with the Campaign. And this is what I keep getting back to, that ultimately the Campaign's power over employees is when they are actually employees. And Mr. Alvarez, at the time, was not an employee. So there was really, at that point-- Once it became clear that this was the only matter that Ms. Brennan had been referring to, there was really no further action for the Campaign to take. So I viewed it as Mr. Platkin authorizing me to convey that information, but that was the Administration's information to convey.

ASSEMBLYWOMAN SCHEPISI: And you are aware that the Administration -- at least people who have come in thus far to testify -- have taken the viewpoint that there was nothing they could do, and that their hands were tied, because this was strictly a Campaign matter.

MR. BERKON: I, frankly, don't quite understand that point of view, because there is nothing for the Campaign to do. He was not -- he was an employee of the Administration, not an employee of the Campaign. So I am -- what I have not heard yet today is exactly what the Campaign was supposed to do with respect to Mr. Alvarez when he was no longer an employee of the Campaign. There was no power to terminate or separate him, because he wasn't an employee; he wasn't receiving compensation or anything like that.

And I think, again-- I want to be careful about the terminate-- You know, I haven't been correct, maybe, each time, but I don't know whether the separation for Mr. Alvarez would be considered a *termination* or whether it was request for *resignation*.

ASSEMBLYWOMAN SCHEPISI: The e-mail you were forwarded specifically was a request by Ms. Brennan to meet with the Governor and First Lady. Recognizing that an allegation had been made that tied, by your testimony, at that point directly to the Campaign, that the Governor has been and is a personal client, as well as his entities, are a client of your firm. Who made the decision to counsel the Governor and the First Lady either to meet or not meet with Ms. Brennan?

MR. BERKON: It was not me; I don't know who may have done that.

ASSEMBLYWOMAN SCHEPISI: So as an attorney, you didn't feel an obligation to counsel your client -- who you also represented in personal capacities -- knowing what you knew, whether or not it made sense for them to meet or not meet?

MR. BERKON: Again, because this was ultimately the Administration's decision to make, I felt that that would be handled on the Administration side, not on the Campaign side.

ASSEMBLYWOMAN SCHEPISI: Did you ever have a discussion with anybody on the Administration side, the Transition Team side, or otherwise, about getting him to meet or not meet with Ms. Brennan?

MR. BERKON: Not during that time period, no.

ASSEMBLYWOMAN SCHEPISI: At any time?

MR. BERKON: I think eventually he did meet with Ms. Brennan.

ASSEMBLYWOMAN SCHEPISI: Have you ever spoken with Rob Long about Mr. Alvarez or about anything?

MR. BERKON: About anything? I'm sure, over the years, during the Campaign I'm sure.

ASSEMBLYWOMAN SCHEPISI: Did you ever speak with Mr. Josephson about Mr. Alvarez?

MR. BERKON: I mean, I don't remember any specific-- Either with Mr. Long or Mr. Josephson, I don't remember a specific conversation about Mr. Alvarez. But I may have had a conversation about him over the years.

ASSEMBLYWOMAN SCHEPISI: Or about his employment?

MR. BERKON: No; I mean, he was on from the beginning of the Campaign through the end, and there was -- I'm not aware of any complaint that was raised about him during the Campaign.

ASSEMBLYWOMAN SCHEPISI: Who brought him onto the Campaign?

MR. BERKON: He would have been hired by the Manager.

ASSEMBLYWOMAN SCHEPISI: Okay. Have you ever had any conversations with the Manager about Mr. Alvarez?

MR. BERKON: Again, over the years I'm sure his name must have come up in conversations. But there was never any HR complaint or anything like that.

ASSEMBLYWOMAN SCHEPISI: So you've never had any discussions about these allegations?

MR. BERKON: Again, not during the time period before the *Wall Street Journal* story broke.

ASSEMBLYWOMAN SCHEPISI: How about with Mr. Rosen (*sic*)?

MR. BERKON: Mr.--

ASSEMBLYWOMAN SCHEPISI: Derek Rosen you mentioned, I believe?

MR. BERKON: Oh, Roseman.

ASSEMBLYWOMAN SCHEPISI: Oh, Roseman, sorry.

MR. BERKON: Yes, I mean, the only person who I had communications regarding the allegations, before October 2, would have been Mr. Platkin and, obviously, with Ms. Brennan.

ASSEMBLYWOMAN SCHEPISI: Okay.

How often did you speak to or communicate with the Governor between June of 2018 and October of 2018?

MR. BERKON: I would have to go back and look; not too frequently.

ASSEMBLYWOMAN SCHEPISI: But you did have communications.

MR. BERKON: Probably a few.

ASSEMBLYWOMAN SCHEPISI: Okay.

MR. BERKON: But I don't -- I have not gone back and checked.

ASSEMBLYWOMAN SCHEPISI: When was the last time you communicated with the Governor?

MR. BERKON: I'm trying to think; I think it would have been December, but I would need to go back and confirm.

ASSEMBLYWOMAN SCHEPISI: Okay.

In your testimony you stated that you had no role, essentially, in the Campaign, or what was going on with the Transition Team, approximately one to two weeks after the Campaign.

MR. BERKON: Correct.

ASSEMBLYWOMAN SCHEPISI: Okay.

You stated Mr. Alvarez had previously worked for New Way for New Jersey.

MR. BERKON: Correct.

ASSEMBLYWOMAN SCHEPISI: What was that entity?

MR. BERKON: New Way for New Jersey was a political organization under Section 527 of the Internal Revenue Code.

ASSEMBLYWOMAN SCHEPISI: Okay. Did you or your firm form it?

MR. BERKON: We were involved in its establishment, yes.

ASSEMBLYWOMAN SCHEPISI: Okay; do you remember approximately when it was formed?

MR. BERKON: It would have been 2015.

ASSEMBLYWOMAN SCHEPISI: Who hired you from that entity?

MR. BERKON: I mean, it would have been a combination of the Governor and the advisors who were involved with the organization. But ultimately it would have been the Governor's -- now-Governor's decision.

ASSEMBLYWOMAN SCHEPISI: And who was running the day-to-day operations at that entity?

MR. BERKON: I would say that there were a few different-- I don't recall there being an Executive Director; I think there were a few different consultants who were most influential in its work.

ASSEMBLYWOMAN SCHEPISI: Who would have been responsible for hiring, day-to-day operations?

MR. BERKON: Yes, I mean, it was mainly an organization-- Again, I think Rob was involved with that organization. So from an operations standpoint, it probably would have been Rob. But there was not one-- There was not like a manager of that organization. I would say there was more than a few, in terms of who was responsible. But Rob was, again, responsible for the compliance.

ASSEMBLYWOMAN SCHEPISI: Other than Mr. Alvarez and Mr. Long, was there anybody else who was involved with the Campaign who was involved with this entity?

MR. BERKON: Brendan Gill, Julie Rogisnky, Steve DeMicco, Brad Lawrence; Matt Platkin was as well. There may be others.

ASSEMBLYWOMAN SCHEPISI: Okay. Is that entity still operational?

MR. BERKON: No.

ASSEMBLYWOMAN SCHEPISI: Were you or your firm primary Counsel to that entity?

MR. BERKON: Yes.

ASSEMBLYWOMAN SCHEPISI: Did you ever put forth policies and procedures for personnel for that entity?

MR. BERKON: I don't recall.

ASSEMBLYWOMAN SCHEPISI: Okay.

Do you know when that entity, kind of, disbanded?

MR. BERKON: It would have been sometime, probably, in 2016.

ASSEMBLYWOMAN SCHEPISI: And that's when the Murphy for Governor entity was formed?

MR. BERKON: Correct.

ASSEMBLYWOMAN SCHEPISI: Okay. And was it your firm that was responsible for forming that entity?

MR. BERKON: Yes.

ASSEMBLYWOMAN SCHEPISI: Okay. Who hired your firm for that entity?

MR. BERKON: Again, ultimately, it's the decision of the candidate to make those determinations.

ASSEMBLYWOMAN SCHEPISI: So it would be fair to say that it was Governor Murphy.

MR. BERKON: Yes, Governor Murphy, along with the Manager.

ASSEMBLYWOMAN SCHEPISI: Who was your primary-- I'm sorry.

ASSEMBLYWOMAN PINTOR MARIN: Excuse me, Assemblywoman.

If we can just start wrapping up the questioning--

ASSEMBLYWOMAN SCHEPISI: Okay.

ASSEMBLYWOMAN PINTOR MARIN: --because we have two more to get through today.

ASSEMBLYWOMAN SCHEPISI: Okay; I only have three more questions, a series of--

ASSEMBLYWOMAN PINTOR MARIN: Assemblywoman, I know that you will do your best to just speak through.

ASSEMBLYWOMAN SCHEPISI: Okay.

Okay; so your firm formed New Start New Jersey.

MR. BERKON: Yes.

ASSEMBLYWOMAN SCHEPISI: Was Mr. Alvarez working at any time for New Start New Jersey?

MR. BERKON: I don't believe that he was.

ASSEMBLYWOMAN SCHEPISI: Can you confirm that?

MR. BERKON: I can go back and confirm, yes.

ASSEMBLYWOMAN SCHEPISI: When was that entity formed?

MR. BERKON: It was 2014.

ASSEMBLYWOMAN SCHEPISI: Okay. Were there any people in common with New Way or Murphy for Governor with that entity?

MR. BERKON: Yes, I mean, the first few people who I mentioned -- Gill, Roginsky, DeMicco, Lawrence.

ASSEMBLYWOMAN SCHEPISI: Was Matt Platkin part of that?

MR. BERKON: I'll go back and confirm; I do not think he was.

ASSEMBLYWOMAN SCHEPISI: Okay. Who did you report to for that entity?

MR. BERKON: I would say it was similar to New Way, in that there were a few different people who were helping to plan that organization's operations. I mean, the Governor, ultimately, probably would have been the one who I reported to.

ASSEMBLYWOMAN SCHEPISI: Is that entity still active?



MR. BERKON: It is not.

ASSEMBLYWOMAN SCHEPISI: Okay; last couple of questions.

Did you or your firm form New Direction New Jersey?

MR. BERKON: Yes.

ASSEMBLYWOMAN SCHEPISI: Okay. When was that entity formed?

MR. BERKON: It was 2018.

ASSEMBLYWOMAN SCHEPISI: Okay. Did Mr. Alvarez ever work for that entity?

MR. BERKON: No.

ASSEMBLYWOMAN SCHEPISI: Okay. Are there any people in common between New Direction New Jersey, the Campaign, New Start, or New Way?

MR. BERKON: In terms of being retained -- yes, Gill, DeMicco, Lawrence.

ASSEMBLYWOMAN SCHEPISI: And who do you report to at that entity?

MR. BERKON: I would say it's the same thing; it's kind of a more diffuse structure.

ASSEMBLYWOMAN SCHEPISI: Okay; but with the Governor, essentially--

MR. BERKON: No, no; so to make this distinction clear. The Governor does not control New Direction New Jersey.

ASSEMBLYWOMAN SCHEPISI: Okay.

MR. BERKON: So I do not report to the Governor whatsoever with respect to that.

ASSEMBLYWOMAN SCHEPISI: Okay.

Going back to investigations and complaints that were made during the Campaign -- and you said that there were about three to five complaints that may have been investigated. Were you ever asked by or conferred with Transition Counsel about any of these allegations as they were looking to hire people and bring them on board as part of the Administration?

MR. BERKON: I don't recall having any conversations in December and January with Mr. Parikh about that.

ASSEMBLYWOMAN SCHEPISI: Okay. So as they were vetting people, as they were doing background checks on people, the Campaign was never spoken to regarding any allegations or complaints?

MR. BERKON: I don't know about the Campaign; I don't recall any conversations with me and Mr. Parikh about it.

ASSEMBLYWOMAN SCHEPISI: Okay. Was there anybody who was part and parcel of the Transition Team, that you were aware of, who was aware of any of the complaints made that were investigated by the Campaign?

MR. BERKON: I don't know; I don't know.

ASSEMBLYWOMAN SCHEPISI: Okay; thank you.

MR. BERKON: Thank you.

ASSEMBLYWOMAN PINTOR MARIN: Thank you.

Mr. Hayden.

MR. HAYDEN: Good afternoon, Mr. Berkon.

MR. BERKON: Good afternoon.

MR. HAYDEN: Thank you for coming up from Washington and patiently listening to our questions.

MR. BERKON: Thank you very much for having me.  
(laughter)

MR. HAYDEN: I believe you've indicated that you became involved in the Katie Brennan aspect of this matter because you were Counsel for the Governor's Campaign, and her e-mail of June 1 made reference to a "sensitive matter" which occurred during the Campaign

MR. BERKON: Correct.

MR. HAYDEN: And as a matter of fact, when you e-mailed her back you indicated, "Per Campaign policy, I am tasked with hearing from anyone who has a Campaign-related concern."

Now, first question, in connection with the e-mail is, what *Campaign policy* were you talking about?

MR. BERKON: I think, there, I would have been referring to the portion of the employee handbook that references a policy for people who can bring complaints, HR-related complaints; and our policy for responding to and investigating those complaints.

MR. HAYDEN: And when you say the *employee handbook*, the employee handbook for the Murphy Campaign?

MR. BERKON: Correct.

MR. HAYDEN: And I take it there's an aspect of custom and practice here, where you indicated our policy, the firm's policy, for sticking with any Campaign-related complaints that could have a legal impact?

MR. BERKON: I'm sorry: I don't quite understand the--

MR. HAYDEN: Well, I take it that the custom and practice aspect was the practice of your firm to deal with Campaign-related complaints, even if it's after the fact?

MR. BERKON: Yes, it's an unusual situation, right? I mean, it is unusual, in my experience, to have, you know, complaints of this nature that are brought to the Campaign after it has kind of reached six months after, seven months after the election.

And so I'm not sure, necessarily, that there was a set custom and practice around that; but my view was there was a reference to the Campaign in the e-mail. Mr. Platkin and I discussed it. We still have an operational corporation, and the handbook has not expired. So that is kind of what I think I was referring to with that language.

MR. HAYDEN: We belatedly asked last night if you could give us -- provide us with the policy. When it's convenient, we would appreciate it, so that we could look at it.

Let's go--

MR. COHEN: We'll do our best to get it for you; we can't promise as to timing or the precise details. But we want to cooperate, so we'll do what we can.

MR. HAYDEN: No, and we understand; and you gave us some of the e-mails, and you gave us material last night. And we asked -- when we were looking at the e-mails, the reference to the policy -- what policy are we talking about? So we would just appreciate receiving it.

MR. COHEN: Well, to be clear, we didn't give you anything last night; we gave it to you last week. We got the request at 6:30 last night.

MR. HAYDEN: The request was last night--

MR., COHEN: We're happy to try to comply.

MR. HAYDEN: Okay. I reviewed it last night, so that's the--

MR., COHEN: Okay; thank you.

MR. HAYDEN: Let's go back to the timeline.

Sir, when did you, or your law firm, become Counsel to the Campaign?

MR. BERKON: It would have been at its inception in May 2016.

MR. HAYDEN: In May of 2016. And obviously you were not informed of the sexual assault allegation in May of 2017.

MR. BERKON: Correct.

MR. HAYDEN: And you were Counsel to the Campaign through the election in November.

MR. BERKON: Correct.

MR. HAYDEN: And did you have some involvement with the Transition Team and Transition Counsel?

MR. BERKON: Again, I mean, our firm -- our involvement was pretty limited. If I recall, I may have been involved in helping to put together some initial documents. Our firm kind of performed public records search requests; we can do that for clients, so I think we did perform some public records searches.

MR. HAYDEN: As background checks?

MR. BERKON: I wouldn't call it a *background check* in any formal sense; like, it is just simply kind of running names through news

searches. I mean, that may be one component of a background check, but our firm did some of that work as well.

MR. HAYDEN: So your firm did some work on backgrounds of perspective appointees?

MR. BERKON: Again, I'm not sure if it was perspective appointees or it was people serving-- Actually, there were-- It may have been some perspective appointees, but also it may have been people who were just, literally, serving on the Transition. As I understand the way the Transition works, there are Transition -- there are people who are actually just serving on Transition committees. And so I don't recall exactly who it may have been; but it may have been those people, as opposed to necessarily appointees. Or it may have been both; I don't know.

MR. HAYDEN: Certainly you and/or your law firm was available to the Transition Committee, if requests were made for legal opinion or advice.

MR. BERKON: The Transition Committee had not, as far as I know, retained us. So, I mean, they could have; but, you know, as far as I know, they had not retained us, no.

MR. HAYDEN: But for example, when you were called upon on June 1 you were available to get involved.

MR. BERKON: But that was as a Campaign-- Were you asking as a Campaign person was I available?

MR. HAYDEN: Or, yes; or as a lawyer involved with the Campaign.

MR. BERKON: Yes.

MR. HAYDEN: Were you available if they had a question?

MR. BERKON: Yes.

MR. HAYDEN: And on December 1, when Katie Brennan authorized Mr. Braz to go to the Transition Committee and advise them of her sexual assault, and give a head's up because there might be an arrest, I take it that the attorney for the Transition Committee and/or Mr. Cammarano never reached out to you.

MR. BERKON: Correct.

MR. HAYDEN: And I take it that if they had reached out for you as to what to do in terms of employment, you would have given them the same advice you gave them in June.

MR. BERKON: I have to think I would have.

MR. HAYDEN: Untenable.

MR. BERKON: That's my view.

MR. HAYDEN: And in early January, when Katie Brennan approached Parimal Garg at the Inauguration and indicated that there was potential wrongdoing involving a high Administration official, and reported it to Mr. Platkin, nobody reached out for you and asked for any advice from you.

MR. BERKON: Correct.

MR. HAYDEN: And I take it that after Mr. Platkin had a dinner meeting with Katie Brennan on March 22, and Katie Brennan told him that she was the victim of a sexual assault during the Campaign by Al Alvarez, nobody reached out for you.

MR. BERKON: Correct.

MR. HAYDEN: And "during the Campaign" meant that it was a Campaign matter.

MR. BERKON: I'm sorry--

MR. HAYDEN: The fact that the assault occurred during the Campaign meant that it was a Campaign matter.

MR. BERKON: Again, I-- Had it been brought to the Campaign during the Campaign, then the question of how to deal with Mr. Alvarez's employment would absolutely have been a Campaign matter. By the time that it was brought to us, and it became clear that the only issue was the allegations-- And as I said, by the end of June, in my view, there wasn't anything for the Campaign to do by June. Certainly had it been brought to the Campaign's attention during the Campaign, it would have been a Campaign matter to resolve.

MR. HAYDEN: And I take it that after March 24, when Mr. Garg had a dinner meeting with Katie Brennan and was told there was a sexual assault, nobody reached out to you and asked for your advice.

MR. BERKON: Correct.

MR. HAYDEN: And I take it, a day or two afterwards, when Mr. Cammarano brought Mr. Alvarez into his office and told him it was time to separate himself -- according to the testimony of Mr. Cammarano -- nobody reached out to you and asked for your advice.

MR. BERKON: Correct.

MR. HAYDEN: Now, there then occurred the June 1 e-mail to the Governor, which was forwarded to you and Mr. Platkin; and it was at that point in time you had a conversation with Mr. Platkin about, "What is this about?"

MR. BERKON: Correct.



MR. HAYDEN: And what was it that Mr. Platkin told you was the nature of the allegation?

MR. BERKON: That Ms. Brennan alleged the Mr. Alvarez had sexually assaulted her; and so that was the nature of the allegation.

MR. HAYDEN: And was it during the very first conversation that you formed the opinion and gave the advice to Mr. Platkin that it was untenable to keep Mr. Alvarez with his job at the Administration?

MR. BERKON: That is my recollection, yes.

MR. HAYDEN: How long was the conversation before you formed the opinion, where you indicated that Mr. Alvarez had to be let go?

MR. BERKON: Not particularly long.

MR. HAYDEN: And was that because of the nature of the allegation? And it was an allegation, it was rape or sexual assault. And did Mr. Platkin tell you that the person who made the allegation was a credible person who happened to have a position as the Deputy Chief of Staff in an agency in the Administration?

MR. BERKON: I don't know whether he characterized her as credible or not. I knew she was an employee of the Administration. I knew she had made the allegation. It was my view that it would not be a tenable situation for him to remain in the Administration.

MR. HAYDEN: Sir, as part and parcel of the discussion, were you aware of the fact that the matter had been investigated by the Hudson County Prosecutor's Office, or a county prosecutor's office, and criminal charges -- where there must be proof beyond a reasonable doubt -- were not brought?

MR. BERKON: Yes, he did tell me about that.

MR. HAYDEN: Did you know it was Hudson, by the way?

MR. BERKON: I don't know.

MR. HAYDEN: Okay. And when you said it was untenable for Mr. Alvarez to stay, was that partially because there's a different standard of proof between whether or not somebody could be charged criminally -- where there has to be proof beyond a reasonable doubt -- and the hiring process, where a decision is made whether or not hire somebody?

MR. BERKON: I think that's implicit in the reasoning. But frankly, at a more basic level, I just don't think that in an Administration -- to have someone with that level of allegations against them, regardless of whether they were dismissed criminally or not, that that is not going to be a position that-- I just don't think someone can continue to work in the Administration with that kind of allegation against them.

MR. HAYDEN: Now, when you decided that -- or you were indicating it was untenable he was kept, by that did you mean that he should be let go regardless of how gracious it was; he should be let go and separated whether he was willing or not?

MR. BERKON: Whether he was willing or not, yes. I didn't express a view on whether it should be termination or separation--

MR. HAYDEN: I understand that.

MR. BERKON: --or resignation, but--

MR. HAYDEN: But he was not -- it was not going to be a suggestion to Mr. Alvarez; it was going to be a direction. And the form could either be a resignation or a termination.

MR. BERKON: Correct.

MR. HAYDEN: And after you had this conversation with Mr. Platkin, was it your understanding that Mr. Platkin was going to act on your advice and on the conversation you had, which you indicated to us he agreed with?

MR. BERKON: Yes; that he would act, yes.

MR. HAYDEN: Now, you may not have known at the time -- and I think you alluded to it -- but I'm sure you're aware from having followed the testimony that -- June 1, June 2, you're talking to Mr. Platkin; and around June 4 or 5, Mr. Platkin approached Charlie McKenna -- who was the direct supervisor of Mr. Alvarez at the Schools Development Authority -- and directed him to tell Mr. Alvarez it was time to separate himself.

MR. BERKON: I read that, yes.

MR. HAYDEN: And were you aware, further, Mr. Alvarez called Mr. Platkin, according to the testimony, for confirmation that the information being told to him by McKenna was true and accurate information, and reflected what the Administration wanted?

MR. BERKON: Yes, if that-- I recall that being in the testimony as well.

MR. HAYDEN: And you eventually reached Ms. Brennan to talk to her about the separation about a week later?

MR. BERKON: It would have been June 10; it would have been nine days after the initial conversation with Mr. Platkin, eight days after my initial e-mail to Ms. Brennan.

MR. HAYDEN: And certainly -- and you conveyed to Ms. Brennan that he was leaving the Administration.

MR. BERKON: Correct.

MR. HAYDEN: And you certainly, as an attorney, wouldn't have made that representation unless you had a good faith belief that Mr. Alvarez was leaving.

MR. BERKON: Absolutely.

MR. HAYDEN: And your good faith was upon your understanding -- however implicit, from conversations with Mr. Platkin -- that it was not a suggestion being given to Mr. Alvarez; it was a direction that it was time to leave.

MR. BERKON: Correct. And my understanding was, actually, it was an agreement that he was going to leave. Like it wasn't just a one-way; but that there was some form of confirmation that he was going to leave.

MR. HAYDEN: And many others here have asked the question about the time frame. And I believe you told us that you expected it to be effectuated much faster; maybe a soft landing, before six weeks. But there was no doubt he was supposed to be gone gone.

MR. BERKON: Correct.

MR. HAYDEN: And if you-- Did you ever follow up with Mr. Platkin, from the middle of June into October, as to whether or not Mr. Alvarez had, in fact, followed the direction to leave?

MR. BERKON: I did not. My last conversation about this with Mr. Platkin would have been towards the end of June, after my last conversation with Ms. Brennan.

MR. HAYDEN: And did you not follow up because you thought it was a done deal?

MR. BERKON: Yes.

MR. HAYDEN: And by the way, Mr. Alvarez was an at-will employee, as far as you knew, was he not?

MR. BERKON: I didn't know what his status was. I'm not familiar with the personnel rules here.

MR. HAYDEN: Do you think -- was it your understanding that if Mr. Alvarez resisted that he could have stayed if his superiors wanted him to go?

MR. BERKON: I mean, my-- I think my general sense of this is from the Federal world, where you have career people and political people. I knew he was a political person, and usually you can terminate political people, at least at the Federal level. But I'm just not familiar with the personnel rules here.

MR. HAYDEN: And by the way, when the *Wall Street Journal* article surfaced in October, you then became aware of the situation; and you became aware for the first time that Mr. Alvarez had actually stayed on until October.

MR. BERKON: Correct.

MR. HAYDEN: When you first became aware of the situation -- I guess when the *Wall Street Journal* called you -- did you give any advice to anybody that his separation must be implemented?

MR. BERKON: Yes, I received an e-mail from Kate King. And I think I did call Mr. Platkin that day and expressed my surprise that he was still there. And I think he resigned that day.

MR. HAYDEN: Well, you expressed your surprise. Did you reiterate your advice?

MR. BERKON: I don't remember whether I reiterated my advice. I think it was implicit in my surprise.

MR. HAYDEN: And did the resignation of Mr. Alvarez -- important time -- to your knowledge come before or after you had the phone call with Mr. Platkin?

MR. BERKON: I don't remember that. I don't know exactly when Mr. Alvarez would have resigned. I think it was that day though.

MR. HAYDEN: Nothing further; thank you, sir.

MR. BERKON: Thank you.

MR. CRITCHLEY: Good afternoon.

MR. BERKON: Good afternoon.

MR. CRITCHLEY: Thank you for appearing.

MR. BERKON: Thank you.

MR. CRITCHLEY: And I guess you could have some question as to why we are asking all these questions.

MR. BERKON: I understand why. (laughter)

MR. CRITCHLEY: Okay.

Now, let me just preface my questions by a couple of remarks.

I read in the newspaper where the Governor gave this Committee some advice. And as I recall it, it was a three-prong statement of advice. And I basically agree with all of them. He said -- he asked that this Committee not be political; I agree with that. He asked that this Committee be survivor-centric; I agree with that. And then he asked this Committee to call balls and strikes. And I agree with that implied baseball comparison.

But utilizing that comparison, we know an umpire is only good, in terms of calling balls and strikes, if he can see the pitch. And similarly, we are only as good at calling balls and strikes if we can see the facts, the clear facts. And some of the problems we have here to date are that we have witnesses who testified, and they have given us, basically, inconsistent facts to the same question. And as you know from experience, that if this were a jury, the judge would be instructing the jury, when evaluating the witness testimony, to consider the nature of testimony and whether there were any consistencies in the testimony.

And I'll point out just a couple in my questioning, and give you some understanding as to why there are some problems.

Number one, when we ask people on the Campaign about the facts of this case, they say, "Talk to the State." When we talk to the Administration, they say, "Talk to the Campaign." It's tough to get a clear understanding of the balls and strikes.

We understand, on one other level, that Matt Platkin recused himself. On the other hand, we have Matt Platkin involved in substantive discussions. It appears on its face to be inconsistent; it's tough to call balls and strikes.

And then we have some of the smartest people in the country; including yourself, with one of the most respected law firms in the country, Perkins Coie. And we have some of the smartest people in the State testifying. And you expect that when they testify, and in evaluating the testimony, you rely on common sense. And common sense would say -- just as you felt when you first heard -- when you have an allegation as serious as the allegation that was made against Mr. Alvarez, it's untenable for him to

stay. And common sense would say if it's so serious, the Governor would be made aware. Yet no one has made the Governor aware.

So when we have those facts, it's kind of difficult to get an idea as what the proper call is on balls and strikes.

Now, do you believe the Governor had a legitimate need to know about what was going on with Mr. Alvarez, regarding allegations made by Katie Brennan, before October 2?

MR. BERKON: Again, I will preface this by saying, I am not aware whether there are State rules that in any way interfere with his ability to be informed or to know about that.

MR. CRITCHLEY: Well, the law says that anybody who has a legitimate need to know should be made aware. You think the Governor had a legitimate need to know?

MR. BERKON: I don't know. I think had Mr. Alvarez departed earlier, then I think the principal remedy that the Administration could control would have been effectuated; and as a result, at that point then, presumably the Governor would have known. I don't know. I mean, I think I would have to think a little bit more and understand exactly what that phrase means -- *legitimate need to know or not*.

MR. CRITCHLEY: I'm not being facetious -- what's tough about that: *legitimate need to know*?

MR. BERKON: Again, like whether that phrase has particular legal meaning, or it's a term of art; I'm not sure.

MR. CRITCHLEY: It's a common, everyday understanding -- legitimate need to know.

MR. BERKON: Yes.



MR. CRITCHLEY: Let me add another fact.

MR. BERKON: Yes.

MR. CRITCHLEY: Well, add to whether he has a legitimate need to know, the allegation is made against someone who is now the Chief of Staff of one of the most important agencies in the State, dealing with multiple billions of dollars in terms of development; a couple hundred employees. And we're telling this person, who was appointed in January, that in June, after six months, he has to go. Do you think that the Governor has a right to know, "One of my key employees is being removed because the accusations against him are so untenable that I may be asked a question. And if I'm asked a question in public, and I say, 'Well, I don't know anything about that,'" don't you think that would be a little difficult to explain, if you were one of his advisors?

MR. BERKON: Look, I think that at the point at which he would have been separated, it would have made sense to give the Governor a briefing as to exactly why that separation was taking place. Whether you involve the Governor in the decision itself, I don't know. I mean, I know that the Governor obviously has a lot of decisions to make, and it's always a tough call as to whether or not to raise particular issues to the level of the Governor. I think certainly the point at which he was going to be separated, then informing the Governor so he is aware of the separation, seems to me like a good policy.

MR. CRITCHLEY: Now, you are one of the smartest lawyers in the country when it comes to political advice and judgement. Did you ever say, "Okay, let me talk to the Governor," in the many times-- "Governor, I just recommend -- me and Matt Platkin, who has recused

himself -- we have just recommended that Mr. Alvarez be terminated. I think you should know this.”

MR. BERKON: I’m sorry, what’s the question?

MR. CRITCHLEY: Do you think you should have told him that, or given him that briefing?

MR. BERKON: Again, I left it to the Administration side of things. So that was ultimately where I landed with it. But--

MR. CRITCHLEY: See, that’s the problem we have. Every time we ask a question, a pointed question, they do this (indicates). Everybody points someplace else. “Don’t talk to me, talk to the Campaign.” “Don’t talk to me, talk to the State.” “Don’t talk to me, talk to the Administration.” And we’re supposed to call balls and strikes.

And you are the Governor’s attorney, or the Administration’s attorney, or the Campaign’s attorney -- I don’t know how many hats. And you’re giving critical advice. And we all went through the RPCs; I’ll look at it again. But forget the RPCs. We, as attorneys, are paid to give judgement calls. Didn’t you think it was appropriate to say, “Governor, we just let this guy go because he has been untenably accused of rape.”

MR. BERKON: Yes; I mean, look; again, I think there was a decision to be made about the separation; and then there was a decision to be made about whether to inform the Governor. You could have informed the Governor before the decision and involved the Governor in that decision; you could have made the decision separately and begun that process, and then let him know.

I think the end result -- where it goes on until October with the Governor not knowing -- is not a good end result.

MR. CRITCHLEY: What does that mean?

MR. BERKON: It means that it didn't play out the way it should have played out.

MR. CRITCHLEY: Because the Governor should have been told.

MR. BERKON: I think he should have been separated.

MR. CRITCHLEY: We have only smart lawyers giving him advice. Was there a conscious decision to keep the Governor in the dark?

MR. BERKON: I really actually don't recall a conversation about it. So I don't remember that actually being a conscious decision.

MR. CRITCHLEY: Being what a conscious decision?

MR. BERKON: The decision not to tell the Governor.

MR. CRITCHLEY: Well, even though you're representing the entity, the entity speaks to individuals.

MR. BERKON: Yes.

MR. CRITCHLEY: The entity doesn't talk; although, theoretically, you represent the entity. In this case, the Governor is, through the entity, your client.

MR. BERKON: Correct. And as I've indicated, my view at the end of the day was that this -- there was no action for the Campaign to take. This was a decision for the Administration to make.

MR. CRITCHLEY: I'm not saying about action; I'm talking about just keeping him abreast of what's going on.

MR. BERKON: Yes.

MR. CRITCHLEY: The RPCs -- I won't repeat it again -- but the RPCs were spoken to you. We have an ethical obligation. It's not like

good judgement, good sense. We, as attorneys, have an ethical obligation to keep our clients abreast of all important matters. And when you have the Governor, your client, through the entity, having one of his key people being terminated for rape -- we have this dark area where no one is saying, "The Governor should be made aware." Do you understand how that is tough to accept?

MR. BERKON: I do understand how that result is tough to accept, yes.

MR. CRITCHLEY: Why?

MR. BERKON: I think because, ultimately, Mr. Alvarez was permitted to stay on through October. And I think if he had been separated in June, the question of whether the Governor was made aware of that before that decision would have been less impactful. I think, ultimately, the reason why everyone in this room is understandably upset about what happened, was Mr. Alvarez staying on for so long; less so about the Governor's involvement in it.

MR. CRITCHLEY: Well, that's not necessarily so.

MR. BERKON: Oh, okay; I may be wrong.

MR. CRITCHLEY: Yes, we don't want to compound bad judgement calls with other bad judgement calls.

MR. BERKON: All right. I will not opine, then, on the views of the members here.

MR. CRITCHLEY: Okay, now, we as attorneys -- and in your case, you as an attorney for the Campaign -- you're called upon in June to give advice; and part of that advice is to exercise judgement, correct?

MR. BERKON: Correct.

MR. CRITCHLEY: And we, as attorneys, in terms of the advice we give, is proportional to the understanding of the facts that we know about?

MR. BERKON: Correct.

MR. CRITCHLEY: So as you said before, facts are contextual. And the context evaluates how we deal with the overall opinion we're going to give the Governor, or the Campaign, correct?

MR. BERKON: Correct.

MR. CRITCHLEY: Now, let me ask you some facts in terms of context.

Were you aware, according to the testimony -- you read the testimony, so obviously from reading it you're aware -- that Pete Cammarano testified that on March 26, after consulting with Matt Platkin, he called into his office Al Alvarez; and Al Alvarez, teary-eyed, was told he had to separate himself from State government. Were you made aware of that in June?

MR. BERKON: I don't remember whether I was made aware of that in June or not. I've since read about it.

MR. CRITCHLEY: Is it something-- That's not like an inconsistent -- minor inconsistency, correct?

MR. BERKON: Sorry, which wouldn't be a minor inconsistency?

MR. CRITCHLEY: Well, the fact that you're called upon in June to make a decision, and your decision is that he should be let go. And according to the testimony he was let go three months before, two months

before. Did you know that he was told in March of 2018 -- meaning Mr. Alvarez--

MR. BERKON: Yes, but I don't remember -- like, I don't remember how-- I know there was an entire State process between -- at least, there was a process of Ms. Brennan informing members of the Administration; and then doing various things between January and June. I don't recall which pieces of that Mr. Platkin might have told me about in that first conversation.

MR. CRITCHLEY: Okay; well, how about when we get to the conversation with you and Mr. Platkin in June, when the two of you confabbed together and say, "This is untenable. He should be gone." Did Matt Platkin say, "Guess what? That's a good idea. We let him go in March." Did he tell you that?

MR. BERKON: Again, I keep repeating my answer. I do not remember whether he told me about that specific conversation between Cammarano and Alvarez.

MR. CRITCHLEY: Were you made aware that, on April 24, 2018, Katie Brennan texted Matt Platkin and said that she had not, as of that time, had any follow-up regarding their conversation of March 20, 2018, when she revealed that Al Alvarez had raped her.

MR. BERKON: I don't recall Matt telling me that.

MR. CRITCHLEY: Well, did you become aware that-- Did you ever hear the name Heather Taylor?

MR. BERKON: Yes.

MR. CRITCHLEY: Who's Heather Taylor?

MR. BERKON: Heather Taylor is an employee in the Administration. I think she's in the Ethics Counsel.

MR. CRITCHLEY: Now, do you know Melissa Lieberman?

MR. BERKON: I do not.

MR. CRITCHLEY: Do you know Jodi Stipick?

MR. BERKON: I do not.

MR. CRITCHLEY: Did Mr. Platkin ever tell you -- and I am now referring to Exhibit G, the last three digits 288 -- that Heather Taylor had a conversation with Melissa Lieberman -- for the record, Melissa Lieberman is a high-ranking official, my words, in the Attorney General's Office -- in March 27, 2018; where Melissa Lieberman, in the Attorney General's Office, gave a recommendation, in connection with a conversation that Heather Taylor had with Melissa -- that Melissa recommended that the Campaign should hire someone to do an investigation regarding the allegations that Katie Brennan had made? Were you made aware of that?

MR. BERKON: That I definitely would have remembered. And so I was not made aware of that at the time.

MR. CRITCHLEY: Were you made aware that in April, April 24, 2018, right after Katie Brennan texted Matt Platkin that she has not heard that Heather Taylor met with Matt Platkin -- were you aware of that?

MR. BERKON: I'm not aware of that meeting.

MR. CRITCHLEY: And that they discussed who should contact -- through Heather Taylor -- should contact Katie Brennan.

MR. BERKON: I'm not familiar with that.

MR. CRITCHLEY: Were you aware of a text or an e-mail that was sent by Heather Taylor to Matt Platkin regarding that exchange?

MR. BERKON: I don't recall anything about that.

MR. CRITCHLEY: I'm referring, for the record, to G290, an e-mail of April 24, 2018; and it's from Heather Taylor to Matt. "I spoke to Katie. She was disappointed that the AG's Office did not have jurisdiction. She understands the reasoning. She thought it was too bad that women do not have recourse unless the event occurs at work. She did not indicate that she was going to the press."

Was there any concern about Katie Brennan going to the press when you were brought on in June of 2018?

MR. BERKON: I think it probably came up in conversation.

MR. CRITCHLEY: Why?

MR. BERKON: Because of the severity of the allegation.

MR. CRITCHLEY: Well, do you know why -- if Matt Platkin and Peter Cammarano told Al Alvarez, on March 26, that he was going, do you know any reason why Katie Brennan should not have told -- strike that -- any reason why Heather Taylor should not have told Katie Brennan, in March of 2018, that, "Guess what? We had a meeting with Al Alvarez in March, and he'll be gone."

You know any reason why that would not occur?

MR. BERKON: I don't.

MR. CRITCHLEY: Because when they say that she was "disappointed that the AG's Office did not have jurisdiction," it seems to suggest that there's nothing the State could do. But if we believe the testimony of Mr. Cammarano, a decision had already been made, and Mr. Alvarez had been told he has to leave, correct?

MR. BERKON: I'm not sure what the question is.



MR. CRITCHLEY: Okay; well, my question is this. Again, inconsistencies. Here, within this context -- were you aware of it -- we have this e-mail, where Katie Brennan is said to be told that nothing could be done, on April; 24, 2018. Yet, if we accept Mr. Cammarano's testimony, as of March 26, 2018, something had already been done. He had been told he has to leave State government. Were you aware of that inconsistency?

MR. BERKON: I was not, no.

MR. CRITCHLEY: Were you aware that Mr. Alvarez has filed an application for unemployment compensation?

MR. BERKON: I saw it in Politico, a headline yesterday. That was the first time I had heard about it.

MR. CRITCHLEY: Okay. Now, and I'm reading from SDA, last numbers 38 -- and I'll read to you, basically, his factual position as to what took place.

Again, I'm talking about inconsistencies in our ability to call balls and strikes.

What he said in his application for unemployment compensation, "On multiple occasions I was told by superiors at the New Jersey's Governor's Office and at the Schools Development Authority that if I did not resign my position I would, in fact, be terminated. I was first told this in June of 2017." Okay, now, inconsistency. Cammarano says he told him in March--

MR. BERKON: Sorry, June 2018 or 2017?

MR. CRITCHLEY: It says here June 2017; but obviously, he means June 2018.

MR. BERKON: Okay.

MR. CRITCHLEY: But here we have an inconsistency. We have Cammarano saying he told him -- meaning Mr. Alvarez -- he has to go in March; Alvarez saying the first time he was told was June. Were you aware of that inconsistency?

MR. BERKON: Not until now.

MR. CRITCHLEY: And then it goes on to say, "The reason my superiors wanted me to leave my employment was that I was being accused of having committed a criminal sexual act before my employment at the Schools Development Authority. Although the accusation had been investigated by local law enforcement, and no charges had been filed, the Governor's Office felt that if the accuser went public with the allegation it would reflect poorly on the Administration. At that time, in June, I requested additional time and assistance in finding a new job before resigning. Both the Governor's Office and the New Jersey Schools Development Authority agreed with that request."

Now, I'm going to read the sentence again.

"At the time, in June, I requested additional time and assistance in finding a new job before resigning. Both the Governor's Office and the New Jersey Schools Development Authority agreed with that request."

Now, my question to you is, were you aware of the conditions that Mr. Alvarez placed before he would accept termination?

MR. BERKON: No.

MR. CRITCHLEY: Do you know if any effort to assist him in finding new employment was done by the State?

MR. BERKON: I don't know.

MR. CRITCHLEY: Do you know if there was any discussion about him getting a job at Rutgers with Matt Platkin?

MR. BERKON: I don't know.

MR. CRITCHLEY: And when I say with *Matt Platkin*, was there a discussion between Matt Platkin and Al Alvarez about some assistance with him getting a job at Rutgers?

MR. BERKON: I don't know.

MR. CRITCHLEY: Now, so we understand, and you say, as of when you told Mr. Alvarez in June of 2018-- Well, first of all, did you tell Mr. Alvarez he had to leave?

MR. BERKON: I never spoke with Mr. Alvarez about it.

MR. CRITCHLEY: Never? Did you ever speak to Mr. Alvarez at all?

MR. BERKON: I mean, I have spoken with him over the years, during the Campaign

MR. CRITCHLEY: You know Mr. Alvarez?

MR. BERKON: I do.

MR. CRITCHLEY: Is there any reason why you didn't say, "Let me talk to Mr. Alvarez and find his version of the events"?

MR. BERKON: No; I mean, I think during the initial conversation, Mr. Platkin said that his defense was that it was consensual. And in my view, it didn't matter. I mean, ultimately, it was not a tenable situation for him to continue. I didn't see what would be gained by my doing yet another investigation. I'm not a prosecutor.

MR. CRITCHLEY: Well, this was not in the context of the criminal case; this was in the context of what you should do in an employment-related matter and get both versions.

MR. BERKON: Yes, and I think in the context-- Again had it been brought to my attention during the Campaign, that is exactly as-- When I was ultimately responsible for that decision to make, that's probably what would have happened. In this context, my view is that the situation was untenable and there wasn't a need to do that.

MR. CRITCHLEY: And I accept your answer. But if we had an Administration official here, they would have said, "Well, if it happened during his employment with the State, and not the Campaign, we would have taken some action." So we have the yin and yang going on.

MR. BERKON: Yes; and look, the only point I'll make to that is that, ultimately-- I mean, and this is, again-- The law is what the law is, and that's for you guys to decide. But ultimately, at the time, his employment was with the Administration. So I don't -- the power to end employment rests with the employer, not with the former employer.

MR. CRITCHLEY: Okay, let me tell you what my final inconsistency-- How it's tough to get our hands around the balls and strikes.

We have all the key people, as of June. We have you recommending he be terminated; one of the most respected attorneys in the country. We have Matt Platkin, the Chief Counsel, recommending he be terminated. You have Peter Cammarano, supposedly saying, in March of 2018, he be terminated. And you're saying, based upon your experience, within six weeks he's supposed to be gone, right?

MR. BERKON: I mean, that's a rough estimate, that the point at which--

MR. CRITCHLEY: Eight weeks.

MR. BERKON: Yes; I mean, look, I think of it as, if you had come to me on each of those dates, I think by the point at which we're getting into August, I would have been surprised.

MR. CRITCHLEY: Okay, now this is the inconsistency that I have trouble with.

With all those facts, with all those "official actions" being taken, after six or eight weeks, after we've said that he has to go -- the allegations are so serious it's untenable, he has to go. We're in the middle of the me-too movement; Alyssa Milano -- she's already gone; it's crazy. He has to go. The only official action that's taken that we can see is that six to eight weeks later, he's not fired. Six to eight weeks later, he gets a \$30,000 raise. He gets a raise; the man who we say is going to be fired because he's untenable. He goes from a salary of \$140,000; an increase of \$30,000; a new salary, \$170,000. And the percentage of salary increase is 21 percent, and the effective date is August 20, 2018, and it's approved by the CEO of the SDA.

Do you see how that's kind of troublesome?

MR. BERKON: Yes.

MR. CRITCHLEY: I have nothing further.

SENATOR WEINBERG: Thank you, Mr. Berkon.

MR. CRITCHLEY: Rosemary has something.

SENATOR WEINBERG: Oh, Rosemary; yes.

MS. ALITO: I have just a couple of questions for clarification.

MR. BERKON: Of course.

MS. ALITO: Mr. Berkon, you mentioned that your law firm was involved, in some way, in doing background checks, to the extent of doing public record checks. Is that correct?

MR. BERKON: Yes.

MS. ALITO: And was that for employees of the Transition or of the Campaign?

MR. BERKON: I need to go back and check. I mean, I think for a couple of the, kind of, most senior-level members, I think we had just done-- As decisions were being made, I think we did some initial requests, just to help winnow lists and things of that nature.

My recollection is that the majority of it was actually just for Transition -- like, volunteer Transition positions. But I didn't have a chance to fully review everything, so-- But that's my recollection.

MS. ALITO: It may have been for some people being hired for the Administration, but you're not certain?

MR. BERKON: Again, the-- I don't know what formal process goes on, in terms of when actual background checks are done. There were a couple of more senior-level Administration positions -- like not even at Transition, but prior to that, the Campaign is thinking through its Transition, and thinking through potential decisions around, at least, winnowing down lists. That one of the tools that they use in that winnowing process is to have some kind of public records check to see, okay, maybe we start with a list of 15 people; but 3 of them are actually not -- we're going to eliminate them, based on some kind of public record search.

MS. ALITO: So in so far as your understanding, the searches that you did were not part of the formal hiring practice?

MR. BERKON: That was certainly not my impression at the time. I don't know to what extent they were used for the formal hiring practice or not.

MS. ALITO: Was your law firm involved in developing or implementing the hiring practices with regard to Transition employees or members of the Administration?

MR. BERKON: Specifically, in terms of--

MS. ALITO: Advising with regard to what the hiring process should be, or how the hiring process, otherwise established, should be implemented?

MR. BERKON: I do not remember us having any involvement in that piece of it.

MS. ALITO: You referred in your testimony to an employee handbook that was utilized during the Campaign.

MR. BERKON: Yes.

MS. ALITO: Was that handbook prepared by your law firm?

MR. BERKON: Yes.

MS. ALITO: And were there employment lawyers from your firm -- I know your firm has a very substantial employment law practice--

MR. BERKON: Yes.

MS. ALITO: --involved in that handbook?

MR. BERKON: Yes.

MS. ALITO: All right. Are you familiar with the provisions of that handbook?

MR. BERKON: I don't have it in front of me; but I'm happy to try and see what I can recall, based on your questions.

MS. ALITO: I think you mentioned that the handbook included a policy with regard to harassment and a procedure for making complaints?

MR. BERKON: Yes.

MS. ALITO: Is that correct?

MR. BERKON: Yes.

MS. ALITO: All right. And did that procedure for making complaints provide that, at the conclusion of an investigation, the person making the complaint would be advised of what the outcome was and what actions were taken as a result of the complaint?

MR. BERKON: I would need to look to see if it was specifically in there. But that sounds like something that might be in there.

MS. ALITO: That makes sense, right?

MR. BERKON: It makes sense.

MS. ALITO: All right.

And I assume you're not familiar with the provisions of the State of New Jersey policy for investigating harassment?

MR. BERKON: I am not.

MS. ALITO: All right. So you're not aware that that policy specifically provides that, at the conclusion of an investigation, both the complainant and the person against whom the complaint is being made are to be advised about the outcome. You're not--

MR. BERKON: I'm not aware of it.

MS. ALITO: Okay.



Now, I think you referred, during your testimony, to a conversation that you had with Katie Brennan in which you advised her that Mr. Alvarez was going to be leaving the employ of the State, correct?

MR. BERKON: Correct.

MS. ALITO: And during that conversation Ms. Brennan asked you if you could tell her why Mr. Alvarez was leaving, right?

MR. BERKON: Correct.

MS. ALITO: And you told Ms. Brennan that you could not tell her the reasons why, correct?

MR. BERKON: Correct.

MS. ALITO: And was that communication to her -- that you could not tell her why Mr. Alvarez was leaving -- was that an instruction that you got from Mr. Platkin or was that your decision?

MR. BERKON: It was not an instruction; it was a discussion that we had.

MS. ALITO: Okay. And can you tell me what the substance of that discussion was?

MR. BERKON: Yes, I mean, my recollection of our basic thinking around it is that we wanted to inform Ms. Brennan that he was leaving, and that was a factual representation. Making a-- Because -- and I think this is because he was not actually being terminated but, in fact, was being asked to resign -- that then attaching a reason to that would have suggested some form of legal representation about that decision. Whereas I think it just fell into the category of asking someone to resign. That's my recollection of our basic thought processes around it.

MS. ALITO: If the policies of both the Campaign and the State of New Jersey provided that at the conclusion of an investigation of a complaint both the complainant and the person against whom the complaint was made were to be informed of the outcome, telling Ms. Brennan that Mr. Alvarez was being asked to leave the government as a result of her complaint would be consistent with those policies, would it not?

MR. BERKON: I'm sorry, would be--

MS. ALITO: Consistent with those policies -- that complainants would be told what the result was of an investigation.

MR. BERKON: Yes; I mean, look, I think the result was, you know, Mr. Alvarez departing. The question of whether then providing the reason above and beyond that -- whether that's necessary under the State law -- I don't know, and obviously I don't have the policy in front of me. I mean, to some degree, ultimately the decision in the context typically of these investigations is that there is some kind of corrective action taken with respect to the employee. A step above that is some form of suspension; a step above that is the person separating.

And oftentimes, they will be -- the communication of that final decision -- you know, those are kind of the main categories that that typically falls in.

MS. ALITO: But perhaps I'm misunderstanding. But my understanding of your testimony is that Ms. Brennan was not told, "Mr. Alvarez is leaving government as corrective action for your complaint." She was simply told he was leaving, and he could have left because he got a

better job, or because he wanted to change careers, or anything else. Is that understanding correct?

MR. BERKON: Your understanding is correct, yes. She was not provided a reason.

MS. ALITO: Thank you.

Nothing further.

MR. BERKON: Thank you.

SENATOR WEINBERG: Okay, thank you, Mr. Berkon.

MR. BERKON: Thank you; I appreciate it.

SENATOR WEINBERG: Thank you for coming up from Washington; thank you for your attorney, and we appreciate your patience and your willingness to answer as many of these questions as you can.

I'm not summing up, but we will look forward to getting the employee handbook, if after you said -- you wanted to review that. And I think there were one or two other questions you might look over for further information we're awaiting.

But again, thank you very much; and you're both dismissed for now.

MR. COHEN: Thank you.

MR. BERKON: Thank you very much.

ASSEMBLYWOMAN PINTOR MARIN: Next, if we could please have Jose Lozano.

ASSEMBLYWOMAN PINTOR MARIN: Good afternoon, Mr. Lozano.

**J O S E L O Z A N O:** Good afternoon.

MS. WOZUNK: Mr. Lozano, your testimony is being recorded so that it may be transcribed for the Committee and may be used in other proceedings. Do you understand that?

MR. LOZANO: Yes.

MS. WOZUNK: Please know all of your responses should be verbal; we cannot record a head shake or a nod. If you do not understand a question, please ask for clarification. Otherwise, the Committee will assume that you understand the question, and that your answers are responsive to that question.

Do you understand those directions?

MR. LOZANO: Yes.

MS. WOZUNK: Mr. Lozano, do you understand that if the statements you make today are willfully false, if you fail to answer a pertinent question or commit perjury, you may be subject to penalties under the law?

MR. LOZANO: Yes.

MS. WOZUNK: Do you understand that you have certain rights under the Code of Fair Procedure, including the right to have your Counsel submit proposed questions on your behalf?

MR. LOZANO: Yes.

MS. WOZUNK: Does your Counsel have any questions to submit today?

**KEVIN H. MARINO, Esq.:** Kevin Marino, for the witness Jose Lozano.

I do not have questions.

MR. CRITCHLEY; Could you please repeat your name?

MR. HAYDEN: Do you practice in New Jersey? (laughter)

MR. CRITCHLEY: Are you licensed? (laughter)

MR. MARINO: Kevin Marino, for the witness Jose Lozano.

I do not have any questions.

MS. WOZUNK: You are entitled to a copy of the transcript of your testimony, at your expense, when such copy is available.

Do you understand that?

MR. LOZANO: Yes.

MS. WOZUNK: You have the right to file a brief, sworn statement relevant to your testimony, for the record, at the conclusion of your appearance today.

Do you understand that?

MR. LOZANO: Yes.

MS. WOZUNK: Before the Committee proceeds with the oath, do you have any questions?

MR. LOZANO: No.

ASSEMBLYWOMAN PINTOR MARIN: Thank you, Mr. Lozano.

If you can please stand and raise your right hand.

(Assemblywoman Pintor Marin administers oath)

If you could please state your name, once again, for the record.

MR. LOZANO: Sure; Jose Lozano.

ASSEMBLYWOMAN PINTOR MARIN: Thank you, Mr. Lozano, for being here this afternoon with us, and for waiting.

It's my understanding that our attorneys promised your attorney that we would finally get to you today.

MR. LOZANO: Yes, thank you.

ASSEMBLYWOMAN PINTOR MARIN: I'm just going to start off with a few questions.

Mr. Lozano, did you participate in the Campaign?

MR. LOZANO: No.

ASSEMBLYWOMAN PINTOR MARIN: When were you specifically hired to work for the Murphy Administration?

MR. LOZANO: The Governor asked me to serve as his Executive Director of the Transition.

ASSEMBLYWOMAN PINTOR MARIN: And when did you commence?

MR. LOZANO: The morning after the election.

ASSEMBLYWOMAN PINTOR MARIN: What were your duties?

MR. LOZANO: I was to run the day-to-day operations of the Transition; but more importantly, the Governor asked me to lead the efforts in recruiting his 24 Cabinet members.

ASSEMBLYWOMAN PINTOR MARIN: Mr. Lozano, those who worked as part of the Transition Team -- did you hire them; were you given a list of names? How did some of the Transition members come to you?

MR. LOZANO: Sure. The majority of the folks who came on to the Transition were individuals who had previously worked on the Campaign.

ASSEMBLYWOMAN PINTOR MARIN: And then from there, what was your -- did you hand-pick, maybe, where you thought some individuals would be best for certain Cabinet positions, or--

MR. LOZANO: There was actually no one on the Transition that later became a member of the Cabinet. But my focus was mostly on the Cabinet and the day-to-day operations of the Transition.

ASSEMBLYWOMAN PINTOR MARIN: Okay. How did you get-- Did you know Mr. Alvarez before working on the Transition?

MR. LOZANO: I've known Mr. Alvarez; yes. But he was a member of the Campaign.

ASSEMBLYWOMAN PINTOR MARIN: How did you know Mr. Alvarez?

MR. LOZANO: I had previously worked with him under the Corzine Administration.

ASSEMBLYWOMAN PINTOR MARIN: What did you do under the Corzine Administration that you knew Mr. Alvarez?

MR. LOZANO: I was his Director of Operations.

ASSEMBLYWOMAN PINTOR MARIN: And at that time, Mr. Alvarez was what?

MR. LOZANO: I don't exactly recall; I think shortly after I left he became Deputy Chief of Staff.

ASSEMBLYWOMAN PINTOR MARIN: Okay. So under you, Mr. Alvarez--

MR. LOZANO: No, Mr. Alvarez never worked under me.

ASSEMBLYWOMAN PINTOR MARIN: Okay. (indiscernible) for the Transition Team? Sorry, I apologize.

MR. LOZANO: Sure.

ASSEMBLYWOMAN PINTOR MARIN: So on the Transition Team, did Mr. Alvarez work under you whatsoever?

MR. LOZANO: Mr. Alvarez served as the Deputy Director of Personnel, who worked directly for Ms. Lynn Haines, who served as the Director.

ASSEMBLYWOMAN PINTOR MARIN: So at any point, did Mr. Alvarez report to you, or was it Lynn who reported to you?

MR. LOZANO: Lynn, ideally, reported to me on the coordination side of Personnel.

ASSEMBLYWOMAN PINTOR MARIN: And let's just say hiring any members or any employees for the State, did Mr. Alvarez have any say in that?

MR. LOZANO: I think we need to be clear. The Transition had no authority to actually hire anyone into the Administration.

ASSEMBLYWOMAN PINTOR MARIN: Okay. So when Mr. Alvarez was tapped to work for SDA, how did that come about?

MR. LOZANO: I'm not 100 percent sure. I know there were discussions that he had had with other folks within the Transition. Again, I had greater focus on the hiring -- well, the working and facilitating the Cabinet search process.

ASSEMBLYWOMAN PINTOR MARIN: But Mr. Alvarez was a Deputy Director of Personnel for the Transition, correct?

MR. LOZANO: That is correct.

ASSEMBLYWOMAN PINTOR MARIN: So what was his role in doing that?



MR. LOZANO: So under the Personnel process, we had opened a web portal that allowed individuals to apply for positions. And in that process, they were able to self-select and identify what roles they thought they'd best qualify for, and what roles they thought they were interested in. The database, then, allowed you to actually sort it. So therefore, Al and some of the members on his team-- For instance, a Cabinet member of a specific Department, prior to them entering, received a binder with all of the individuals who had expressed interest in working in that Department.

ASSEMBLYWOMAN PINTOR MARIN: Okay.

So as you know, Mr. McKenna was here -- was one of our last witnesses here; and he testified that -- obviously he knew you and you had a good relationship with him from working under previous Administrations. And that you were the one who reached out to Mr. McKenna once you found out that Al was going to be his Chief of Staff, correct?

MR. LOZANO: Correct.

ASSEMBLYWOMAN PINTOR MARIN: Who told you that Mr. Alvarez was going to be the SDA's Chief of Staff?

MR. LOZANO: Mr. Alvarez.

ASSEMBLYWOMAN PINTOR MARIN: So Mr. Alvarez informed you that he was going to be Chief of Staff to the SDA.

MR. LOZANO: Mr. Alvarez had come to me and said, "You know Charlie McKenna well; do you mind introducing me to Charlie?"

ASSEMBLYWOMAN PINTOR MARIN: So how did Mr. Alvarez find out that he was going to be the Chief of Staff? Do you know? Did he tell you who told him?

MR. LOZANO: He did not tell me; again, it was not a focus of mine to actually facilitate the subcabinet components and the personnel processes of departments and agencies. I would defer that question to Mr. Cammarano and Mr. Platkin.

ASSEMBLYWOMAN PINTOR MARIN: So maybe -- not even Lynn Haines at that point?

MR. LOZANO: So if I can take a step back and describe everyone's role in the Transition, I think it may be slightly easier.

ASSEMBLYWOMAN PINTOR MARIN: Okay.

MR. LOZANO: My role -- I served mostly on the day-to-day operations of the Transition, focusing on the facilitation of the Cabinet search.

ASSEMBLYWOMAN PINTOR MARIN: So you-- If I could stop you at that point.

MR. LOZANO: Sure.

ASSEMBLYWOMAN PINTOR MARIN: So you worked, pretty much, more hand-in-hand with Pete Cammarano, who was also, at that point, kind of really looking for Cabinet members, correct?

MR. LOZANO: That's correct.

ASSEMBLYWOMAN PINTOR MARIN: Okay, continue. I'm sorry.

MR. LOZANO: Mr. Cammarano focused on the building out of the front office; assisted with the lame duck agenda, the first 100 day agenda, the Cabinet process. Lynn Haines focused on the subcabinet components--

ASSEMBLYWOMAN PINTOR MARIN: Okay.

MR. LOZANO: --filling the Cabinet, to supporting the new Cabinet members upon being announced. Mr. Platkin focused on building out the Counsels Office and the Authority's Unit. And then we had a Policy shop that facilitated the coordination of all the Policy Committees.

ASSEMBLYWOMAN PINTOR MARIN: Okay. So moving forward, Mr. Alvarez reached out to you and said, "Hey, you know Charlie. Do you think that you can set up a meeting for me to meet with him because -- surprise -- I'm going to be his Chief of Staff?"

MR. LOZANO: Yes.

ASSEMBLYWOMAN PINTOR MARIN: And you did so.

MR. LOZANO: Yes, correct.

ASSEMBLYWOMAN PINTOR MARIN: Did you hear back from how that meeting went? Because I think we received some text messages that you had a good conversation with Mr. McKenna.

MR. LOZANO: Yes, Al-- I don't exactly recall the details of the conversation; but I do believe he swung by, at some point, and said it was a good conversation with Charlie, and we moved on.

ASSEMBLYWOMAN PINTOR MARIN: Okay.

And if we could go back a little bit.

MR. LOZANO: Sure.

ASSEMBLYWOMAN PINTOR MARIN: At some point, someone who was working on the Transition -- who is now the Chief of Staff, Justin Braz -- went to you, with Ms. Brennan's permission. You didn't know her name at that point, but he told you that there was someone who was working on the Transition who possibly had an allegation against him.

MR. LOZANO: To be clear, Mr. Braz went to our Transition Counsel--

ASSEMBLYWOMAN PINTOR MARIN: Counsel.

MR. LOZANO: --and our Chief of Staff designee, Mr. Cammarano. And both of them, then, came to me and informed me that Justin Braz had -- unbeknownst and against her wishes -- had provided us information that Al was being accused of sexual assault.

ASSEMBLYWOMAN PINTOR MARIN: And obviously, then, were you concerned?

MR. LOZANO: Yes, of course.

ASSEMBLYWOMAN PINTOR MARIN: So what was your next step after you found this out?

MR. LOZANO: Defer it to Counsel on what the next proceedings are. This is the first time I've ever been in a position where an accusation was brought forward, but without an accuser.

ASSEMBLYWOMAN PINTOR MARIN: And you're talking about the Transition Counsel, correct?

MR. LOZANO: That is correct.

ASSEMBLYWOMAN PINTOR MARIN: And what is the Transition Counsel's name again?

MR. LOZANO: Mr. Raj Parikh.

ASSEMBLYWOMAN PINTOR MARIN: Okay; and at that moment, then, what did Mr. Parikh tell you?

MR. LOZANO: That he was going to look into it and would get back to us on some sort of recommendation.

ASSEMBLYWOMAN PINTOR MARIN: Can you tell me -- can you just specify the timeline of when you were told? It doesn't have to be the exact date; just more or less the month.

MR. LOZANO: It was the early part of December.

ASSEMBLYWOMAN PINTOR MARIN: Early part of December. So you were aware that there was an allegation prior to you setting up the meeting with Mr. McKenna?

MR. LOZANO: Correct.

ASSEMBLYWOMAN PINTOR MARIN: If we can go back once again. I'm sorry I'm jumping, because we're just trying to figure out certain timelines and, kind of, certain instances of when and what happened before and after.

Beforehand, once you found out and you went to your General Counsel, what did he say to you?

MR. LOZANO: The General Counsel?

ASSEMBLYWOMAN PINTOR MARIN: Yes, for the Transition Team, Mr. Parikh.

MR. LOZANO: At the point that Mr. Braz came to me? I just want to make sure of the time frame you're talking about.

ASSEMBLYWOMAN PINTOR MARIN: So once Mr. Cammarano and Mr. Braz came to you, and you had the discussion that there was someone on the Transition, and you asked for the advice of Counsel, what did Mr. Parikh tell you?

MR. LOZANO: Madam Chair, if I can just take a step back and, maybe, articulate the full time frame. It may be a little easier on some of the questions.

ASSEMBLYWOMAN PINTOR MARIN: Sure.

MR. LOZANO: On or around sometime in December, Justin Braz came forward to Mr. Cammarano and Mr. Parikh that Mr. Alvarez was being accused of something, and that he was going to define his relationship with the individual, coming forward. We then proceeded, and had a very brief discussion on how do you proceed with something like this. Counsel proceeded and said, "Let me look into it and come back to you."

Within a day or so of that initial conversation, Mr. Parikh came back and stated that Mr. Braz had come forward and stated that the Prosecutor's Office was no longer proceeding with the case.

So therefore, in a moment, within a couple of days we had a very brief conversation; and that the Prosecutor's Office was not proceeding with the case.

ASSEMBLYWOMAN PINTOR MARIN: So even though you received word that the Prosecutor -- I'm not sure if you knew at that point that it was the Hudson County Prosecutor--

MR. LOZANO: No.

ASSEMBLYWOMAN PINTOR MARIN: --that they decided not to move forward in filing charges.

Were you still concerned at that point?

MR. LOZANO: I was more puzzled about the scenario.

ASSEMBLYWOMAN PINTOR MARIN: Did everything just continue to move forward?

MR. LOZANO: On the remainder of the Transition? Yes.

ASSEMBLYWOMAN PINTOR MARIN: So even though everyone was aware that there was an allegation -- right? -- and granted,

that there was no step being done with regards to the prosecution, we just kept moving forward. There were no other conversations when it came down to Mr. Alvarez and what this accusation meant.

MR. LOZANO: No. Counsel proceeded forward and stated that we were going to proceed to do a background check, which was something we had established at the beginning of the Transition; and that he would proceed forward with a background check. The background check came back clear -- that he had not had any sort of any accusations or any sort of other challenges similar in nature in the past.

ASSEMBLYWOMAN PINTOR MARIN: But isn't this typical, anyway, of anyone who's hired at the State--

MR. LOZANO: I'm not--

ASSEMBLYWOMAN PINTOR MARIN: --for certain positions? Or at least for a Chief of Staff?

MR. LOZANO: From a Transition's perspective, this was the first time that a Transition had done background checks for senior officials going in there. They have been done, before, of course, on Cabinet members, on advise and consent members; but this is the first time that a Transition proceeded forward to do background checks on all individuals who were going into the Administration, in the sense of the Governor's Office.

ASSEMBLYWOMAN PINTOR MARIN: Did you ever speak to Mr. Alvarez about this allegation?

MR. LOZANO: I did not; I did not. I was asked not to.

ASSEMBLYWOMAN PINTOR MARIN: You were asked not to by whom?

MR. LOZANO: By Mr. Parikh.

ASSEMBLYWOMAN PINTOR MARIN: By Mr. Parikh, the attorney.

Did you, maybe, ever recommend or talk to those above you that maybe we should reconsider or look into a separate investigation of this allegation?

MR. LOZANO: It's difficult to do an investigation when you don't have an accuser.

ASSEMBLYWOMAN PINTOR MARIN: Did anyone, maybe, just think about pulling Mr. Alvarez aside and having a conversation with him?

MR. LOZANO: On advice of Counsel, Transition Counsel -- he did not do so.

ASSEMBLYWOMAN PINTOR MARIN: Maybe not you, Mr. Lozano, but maybe Counsel should have, maybe, had a conversation with Mr. Alvarez.

MR. LOZANO: I asked that question, and the Counsel provided that he would not be asking him. There were specific reasons for it; he did not share with me what those were.

ASSEMBLYWOMAN PINTOR MARIN: Okay. And how did you feel at that point?

MR. LOZANO: In a very fast-paced Transition, you have to rely on individuals who are qualified counsels to serve as counsel and provide you the necessary advice.

ASSEMBLYWOMAN PINTOR MARIN: Fair. But I guess it's fair to say that, personally, you might have been a little uneasy about it.



MR. LOZANO: Uneasy? Yes. But again, this was an accusation in which there was no accuser who came forward. It's very difficult to actually-- And the moments that came forward, it was a -- there was no details of any of this. It was, "Al's been accused of sexual assault," and no details followed behind that.

ASSEMBLYWOMAN PINTOR MARIN: Were you aware that, at some point, during him working on the Transition, that they -- there was a decision to limit Mr. Alvarez's hiring capability?

MR. LOZANO: Again, Transition had no authority to hire anyone. His role was to facilitate the résumés, and put them into a binder and provide them to Cabinet members when they were coming in. But yes, Mr. Parikh -- I do recall him stating that he had limited his involvement, but I did not know the extent of that involvement.

ASSEMBLYWOMAN PINTOR MARIN: Do you know if Mr. Alvarez was aware of his limited capability at that point?

MR. LOZANO: I have to assume that that was communicated to him via Counsel.

ASSEMBLYWOMAN PINTOR MARIN: Okay.

So moving forward to your conversation with Mr. McKenna. You introduced him; and then you stepped away from the process, correct?

MR. LOZANO: Correct, yes.

ASSEMBLYWOMAN PINTOR MARIN: And after that point, did you have any more involvement with Mr. Alvarez?

MR. LOZANO: No.

ASSEMBLYWOMAN PINTOR MARIN: Were you aware, at any point, that these allegations were still brewing and being talked about?

MR. LOZANO: No.

ASSEMBLYWOMAN PINTOR MARIN: And to your knowledge, you don't think that Mr. McKenna, at that point, was also aware, correct?

MR. LOZANO: That's a question for Mr. McKenna. I don't -- I do not (indiscernible) having any sort of conversation with him.

ASSEMBLYWOMAN PINTOR MARIN: When you spoke to -- when you received advice from Counsel, then you actually spoke to Mr. Parikh, as you stated. That was just a concern of yours; Mr. Alvarez. Did you at any point tell Mr. Parikh that maybe the Governor should know?

MR. LOZANO: This wasn't-- The discussion did not come up.

ASSEMBLYWOMAN PINTOR MARIN: It didn't come up at all.

MR. LOZANO: No.

ASSEMBLYWOMAN PINTOR MARIN: So at no point-- At that moment in time -- and I understand that there was a lot going on, and you just got word that Mr. Alvarez was cleared of any wrongdoing from the perspective of the Prosecutor's Office in Hudson County -- at that point, did anyone-- Because you were talking to Pete Cammarano, probably Mr. Platkin at that point; so those above you, right? At no point did anyone have a discussion about Mr. Alvarez and his continued process of employment?

MR. LOZANO: Did I have-- I apologize.

ASSEMBLYWOMAN PINTOR MARIN: Yes, did you or anyone just, kind of, have a conversation as to -- this might be important and let the Governor know?

MR. LOZANO: I did not have that conversation.

ASSEMBLYWOMAN PINTOR MARIN: Were you aware if anybody else had the conversation at that point?

MR. LOZANO: No, I'm not aware.

ASSEMBLYWOMAN PINTOR MARIN: Okay.

Thank you, Mr. Lozano. I appreciate your honesty.

SENATOR WEINBERG: Thank you.

When were you hired to be the Executive Director of the Transition Committee?

MR. LOZANO: The Governor asked me to serve as Executive Director sometime after Labor Day.

SENATOR WEINBERG: Okay. And how did you know the Governor? Had you been involved in the Campaign, or any other--

MR. LOZANO: The Governor -- we had run into each other, I think, at an event; and we had chatted. We knew of each other a little bit. And the Governor had asked me-- To be specific, it was right around the time where Rutgers had issued a report talking about transitions. And we just so happened to be in the same vicinity when we started to have a conversation about establishing transitions in an earlier fashion. And he had asked me to follow up with some of his team members. And a couple of conversations resulted in, sometime after Labor Day, the Governor asking me to serve as Executive Director of his Transition.

SENATOR WEINBERG: So this was actually a few months before the election.

MR. LOZANO: About a month or so.

SENATOR WEINBERG: About a month or so before the election.

MR. LOZANO: Oh, I'm sorry. Before the election? Labor Day was in September, the election was in November.

SENATOR WEINBERG: Right, okay; about a month before.

Now, how big a staff did you have at the Transition Committee?

MR. LOZANO: I apologize: I couldn't hear you.

SENATOR WEINBERG: How big a staff did you have--

MR. LOZANO: Oh, on the Transition? Staff was about 70-some-odd individuals, I believe.

SENATOR WEINBERG: Okay; and how was that staff gathered?

MR. LOZANO: The majority of the staff, again, came from the Campaign.

SENATOR WEINBERG: Okay; you had about 70 staff members. And mostly people came from the Campaign, I'm assuming.

MR. LOZANO: Correct.

SENATOR WEINBERG: Okay.

Now, let's fast-forward to-- First of all, were members of the Transition Committee asked to sign nondisclosure agreements?

MR. LOZANO: I don't recall-- You're talking about the staff. I don't recall asking staff to sign nondisclosure agreements. We did ask members who volunteered to be on the Policy Committees to sign nondisclosures.

SENATOR WEINBERG: Just members of the Policy Committee, and as volunteers. It was not a requirement?

MR. LOZANO: I believe we had asked folks to sign nondisclosure agreements. I'm not sure if all 600 actually signed them, but I do know it was something that we had asked folks to do.

SENATOR WEINBERG: So was that a requirement or voluntarily?

MR. LOZANO: We required it; but I will be fully honest and say I'm not convinced that everyone signed them.

SENATOR WEINBERG: Okay.

Let's fast-forward to December 1, when this conversation took place, or just prior to when Ms. Brennan -- according to her testimony, and Mr. Braz's testimony -- told Mr. Braz that there might be an arrest coming.

When in this time period did you find out that Al Alvarez was the accused?

MR. LOZANO: Almost right away. We knew it was Al Alvarez who was the individual who was accused in the initial conversation.

SENATOR WEINBERG: And who told you that?

MR. LOZANO: Mr. Cammarano and Mr. Parikh.

SENATOR WEINBERG: Excuse me? I'm sorry.

MR. LOZANO: Mr. Cammarano and Mr. Parikh.

SENATOR WEINBERG: Okay; and did they, at any time, indicate who the accuser was?

MR. LOZANO: No, there was no knowledge of the accuser.

SENATOR WEINBERG: Okay.

Now, we do have an e-mail from Mr. Parikh in which he talks about, and you refer to, a background check on Mr. Alvarez. He talks about a *special background check*. Are you aware of some kind of a special background check, as opposed to any other background check?

MR. LOZANO: I'm not aware of what makes a background check special.

SENATOR WEINBERG: Well, what kind of background checks were you involved with?

MR. LOZANO: The background checks -- we had established a form in which the individual gave consent; in which the law firm of Genova Burns searched publicly reported records of individuals and provided a background check on individuals; very cursory information.

SENATOR WEINBERG: But you didn't know what this reference was to a *special* background check.

MR. LOZANO: No.

SENATOR WEINBERG: Okay, now Mr. Alvarez tells you he's got a job at the Schools Development Authority. How was this handled? Did people just come to you and say, "Oh, by the way. I'm going to work at--" whatever?

MR. LOZANO: Is that your question?

SENATOR WEINBERG: Yes.

MR. LOZANO: Okay. It was fairly customary, for the mere fact that I had nothing to do with the personnel process of going into subcabinets. So there were individuals who would drop by my office and say, "I got a job at the Department of Education. This is great." Okay, that's nice. And we proceeded forward.

So again, my focus was not necessarily on filling the Administration in positions. And so for someone to swing by my office or, at some point, in the hallway and stop me to say that they've gotten a position within the Administration; and me not knowing on who hired them, on who did the final approval, was fairly customary.

SENATOR WEINBERG: So there was no official notification to the Transition Committee that they were going to hire somebody.

MR. LOZANO: There was a facilitation of the Transition members -- Transition team members. The final approval and the offers that came forward could vary from the Cabinet member themselves; it could be from a senior official; for the subcabinet, it could have been Lynn, it could have been Pete Cammarano, it could have been Matt Platkin. There were a variety of individuals who could have, and had the authority to, sign off on an individual to be hired upon Inauguration Day.

SENATOR WEINBERG: Did you know the group -- did you know the names of the group of individuals who had the sign-off authority?

MR. LOZANO: The majority of the final signoffs funneled either through Mr. Cammarano or Mr. Platkin.

SENATOR WEINBERG: Okay.

And now, you knew at the beginning of December that a member of your Transition Team -- who somehow, even though he wasn't in charge of hiring -- somehow had the title *Assistant* or *Deputy Executive Director of Personnel*. You knew that he was accused of rape, is that so?

MR. LOZANO: No. I knew that he was accused of *sexual assault*.

SENATOR WEINBERG: But you did not know any of the details of that accusation.

MR. LOZANO: Absolutely none.

SENATOR WEINBERG: Okay.

In your mind, is there some difference -- and I know *sexual assault* sounds more polite, but I think they have same connotation. So is there some difference between *sexual assault* and *rape*?

MR. LOZANO: I think there's a statute that defines that. I'm not trying to be cute right now.

SENATOR WEINBERG: Okay.

MR. LOZANO: But I'm telling you of the information that was provided at the current moment. And so I'm not distinguishing rape or sexual assault; but at that moment the word *rape* had never come up.

SENATOR WEINBERG: Okay. So as far as you were concerned, he was accused of sexual assault. And then you were told-- Or how did you find out that some kind background check was done and that it came back clear or clean?

MR. LOZANO: His background check was communicated to me via counsel, Transition Counsel.

SENATOR WEINBERG: By the Transition Counsel.

MR. LOZANO: Correct.

SENATOR WEINBERG: Were there personnel policies and procedures for the Transition Office?

MR. LOZANO: Define *policies and procedures*. In the hiring, in the (indiscernible)?



SENATOR WEINBERG: Mr. Lozano, are you a State employee?

MR. LOZANO: No.

SENATOR WEINBERG: Okay; where do you work now?

MR. LOZANO: I work for Choose New Jersey.

SENATOR WEINBERG: I'm sorry?

MR. LOZANO: I work for Choose New Jersey.

SENATOR WEINBERG: Does Choose New Jersey have any policies and procedures concerning personnel; an employee handbook?

MR. LOZANO: Yes; yes, we do.

SENATOR WEINBERG: Okay. Did the Transition Committee have an employee handbook or policies and procedures that governed employees' rights, etc., at the Transition Committee?

MR. LOZANO: There was a handbook that was given to Transition employees on behalf of the State, yes.

SENATOR WEINBERG: What kind of a handbook?

MR. LOZANO: An employee handbook.

SENATOR WEINBERG: An employee handbook. And did that handbook give any direction to the head of the Transition Committee on things like sexual assault accusations?

MR. LOZANO: I don't recall seeing that. I don't recall reading-- I don't recall the entire details of the handbook right now.

SENATOR WEINBERG: Did you review the handbook that was given to the 70 Transition employees?

MR. LOZANO: Yes. To be clear, the only people who were required to receive the handbook, believe it or not, were the individuals who

were hired officially on the Transition via State dollars. So as you all know, the Transition is appropriated only about \$250,000. The State only requires those individuals who are paid from State dollars to actually receive the handbook. We took it upon ourselves to actually provide all 70-some-odd individuals with the handbook.

SENATOR WEINBERG: Whether they were paid or volunteer.

MR. LOZANO: That is correct, yes.

SENATOR WEINBERG: Okay. And was this a handbook that you reviewed?

MR. LOZANO: At the time it being given? Yes.

SENATOR WEINBERG: And did it outline some kind of a policy or procedure that an employee of the Transition Committee, who might have had some problem or some issue -- did it outline a policy or procedure on where that employee would go with some kind of a complaint?

MR. LOZANO: I don't recall the specifics.

SENATOR WEINBERG: Okay.

So now you are left, in the beginning of December, with knowing that one of your employees is accused of sexual assault. And that employee then comes to you and says, "Hey, I got a job." Is that how it happened?

MR. LOZANO: He came to me, I believe, sometime in January, just prior to the inauguration.

SENATOR WEINBERG: And said--

MR. LOZANO: "I'm going to the Schools Development Authority. You know Charlie; can you please introduce me to Charlie?" And I did so.

SENATOR WEINBERG: And in between your finding out that he was accused of sexual assault, and his coming to you and saying, "I have a job and, therefore, I won't be here tomorrow," or "I won't be here Monday--"

MR. LOZANO: No one officially starts in the government until the Governor is inaugurated.

SENATOR WEINBERG: Okay; so he started, I think, the week after the Governor was inaugurated. So he had to come to you and say, "I'm not coming back here."

MR. LOZANO: The Transition ends upon being sworn in as Governor.

SENATOR WEINBERG: Okay. So you go out of business as of that moment?

MR. LOZANO: Yes; my unemployed position went out of business, yes.

SENATOR WEINBERG: Okay. So was it before the inauguration that he came to you and told you that he had a position in the government?

MR. LOZANO: Correct.

SENATOR WEINBERG: And did you think of checking with anybody further -- with the Campaign Counsel, or with the Chief of Staff, or with the person who is about to become Chief Counsel -- that, "Hey,

you've got somebody coming to work here next Wednesday who has been accused of sexual assault”?

MR. LOZANO: I don't recall having a conversation with Mr. Cammarano or Mr. Platkin about it. But it was a safe assumption that they had approved it, or one or the other had approved his employment into the SDA.

SENATOR WEINBERG: Did you have any discussions with anybody about what you thought might have taken place in this particular situation--

MR. LOZANO: No.

SENATOR WEINBERG: --between the accuser and the accused?

MR. LOZANO: No.

SENATOR WEINBERG: No.

MR. LOZANO: Again, we did not know who the accuser was.

SENATOR WEINBERG: Okay.

All right, so as far as you knew, you had somebody who worked in Transition in charge of Personnel; he was accused of sexual assault; and, “Goodbye, I have a job,” the week after inauguration. That was your whole involvement. Is that correct?

MR. LOZANO: Yes.

SENATOR WEINBERG: Thank you.

ASSEMBLYWOMAN PINTOR MARIN: Assemblywoman Muñoz.

ASSEMBLYWOMAN MUÑOZ: That's me. (laughter)

Thank you.

I have a couple of questions.

I want to get back to getting the manual. You said that you officially gave the manual to those -- to a certain group of people, and that you handed a manual to the others. You know, we're required--

MR. LOZANO: No, no.

ASSEMBLYWOMAN MUÑOZ: That's what you said.

MR. LOZANO: No, I need to correct that.

ASSEMBLYWOMAN MUÑOZ: Okay.

MR. LOZANO: Everyone received the manual.

ASSEMBLYWOMAN MUÑOZ: *Received* the manual.

MR. LOZANO: Yes.

ASSEMBLYWOMAN MUÑOZ: But were they required to *read* the manual?

MR. LOZANO: The individuals are handed the manual.

ASSEMBLYWOMAN MUÑOZ: Yes, right; that's what you said.

MR. LOZANO: Right.

ASSEMBLYWOMAN MUÑOZ: Well, we're required to read a manual and then sign that we actually read the manual and did our work. So I'm just curious if there was any procedure beyond just handing them a manual.

MR. LOZANO: I don't recall the specifics; I would need to go back. But I do believe there is some sort of acknowledgement that they have received the manual.

ASSEMBLYWOMAN MUÑOZ: Received; received, but not read it.

Okay, thank you.

Can I ask you, do you -- did you have communication with the Governor during the Transition period?

MR. LOZANO: Yes.

ASSEMBLYWOMAN MUÑOZ: Did you feel the need to tell the Governor that there was a person who had been accused of sexual assault who was looking for -- who was on the Transition Team and looking for a job in the Administration?

MR. LOZANO: No; there was not a moment in which I had a discussion or a thought that I needed to brief the Governor on it.

ASSEMBLYWOMAN MUÑOZ: Do you think it was important enough, in retrospect, for you to have had a discussion?

MR. LOZANO: I think life is much easier when we look at every scenario in retrospect.

ASSEMBLYWOMAN MUÑOZ: Who did you report to?

MR. LOZANO: The Chief of Staff; the Governor-elect himself at the moment.

ASSEMBLYWOMAN MUÑOZ: So they were your direct report; you reported directly to them. So those were people who-- This is a serious charge. I mean, sexual assault -- whether it's a rape or a sexual assault, it's still a serious charge, correct?

MR. LOZANO: Agree; yes.

ASSEMBLYWOMAN MUÑOZ: Agree. And it would seem-- You have a person who is on the Transition Team, looking for a very high position -- Chief of Staff, would you agree, is a very high position with the

SDA -- who has been accused of rape. And yet you thought you shouldn't tell anybody?

MR. LOZANO: Again, let me be clear. There was an individual who -- second-hand information -- came to the Transition and stated that Al was accused of sexual assault--

ASSEMBLYWOMAN MUÑOZ: Who told you that?

MR. LOZANO: --and was being arrested. And that actually never occurred, and the accuser never came forward. It's difficult to not only launch an investigation, but it's difficult to actually discern any additional information from that.

ASSEMBLYWOMAN MUÑOZ: Who was the first person to tell you that he had been accused of sexual assault?

MR. LOZANO: Like I said before, it was Mr. Cammarano and Mr. Parikh.

ASSEMBLYWOMAN MUÑOZ: So they both knew.

MR. LOZANO: They both told me.

ASSEMBLYWOMAN MUÑOZ: They both told you; okay.

Were you involved in the decision to limit Mr. Alvarez's hiring ability within the Transition Team?

MR. LOZANO: I was informed.

ASSEMBLYWOMAN MUÑOZ: Informed by whom?

MR. LOZANO: By Mr. Parikh.

ASSEMBLYWOMAN MUÑOZ: By whom?

MR. LOZANO: By Mr. Parikh.

ASSEMBLYWOMAN MUÑOZ: So he told you to limit; and did you ask him why?

MR. LOZANO: He told me he communicated his limitations in his role as Deputy Director of Personnel.

ASSEMBLYWOMAN MUÑOZ: But you didn't ask why?

MR. LOZANO: I think it was pretty clear why.

ASSEMBLYWOMAN MUÑOZ: See, we keep going back to this. Everybody was very clear about a lot of things, but nothing was done in so many cases. I think that's what we're -- I'll speak for myself -- I'm struck by. You know, again, we have these silos, where everybody knows this information; nobody goes the next step, which is to tell their superior to tell the superior -- the direct person.

So when you told Mr. Alvarez this, how did he react?

MR. LOZANO: I'm sorry?

ASSEMBLYWOMAN MUÑOZ: When you told Mr. Alvarez that his responsibilities would be limited, what was his response?

MR. LOZANO: I did not tell Mr. Alvarez. Like I mentioned before, Mr. Parikh did.

ASSEMBLYWOMAN MUÑOZ: Mr. Parikh did; okay.

And was that immediate? Was there an immediate change in his responsibilities when Mr. Parikh told him this?

MR. LOZANO: I defer that question to Mr. Parikh.

ASSEMBLYWOMAN MUÑOZ: So what did he, then, do within the Transition Team if he wasn't doing that job that he had been tasked with doing?

MR. LOZANO: He was still proceeding forward with some basic responsibilities of printing out the résumés, putting them in binders, and handing them off to Cabinet members and other officials.



ASSEMBLYWOMAN MUÑOZ: That sounds like a lesser job than being in charge of hiring. And he responded without any reaction whatsoever?

MR. LOZANO: Again, I'm not the person to ask that question of. I was not the one who communicated that to him.

ASSEMBLYWOMAN MUÑOZ: I mean, we talk about a *special* background check. Do we know if a background check includes a current investigation?

MR. LOZANO: I think it must. It's a publicly reported document. I'm not sure that is something that is captured. I'm not 100 percent sure.

ASSEMBLYWOMAN MUÑOZ: Because this was an ongoing-- When you did the background check, had the Hudson County Prosecutor's Office already informed somebody in the Administration, or you -- somebody -- that here would be no charges against Mr. Alvarez?

MR. LOZANO: We received information that the Prosecutor's Office was not proceeding with the charges. We didn't know what jurisdiction or any of the details.

ASSEMBLYWOMAN MUÑOZ: Do you know the date that you were informed?

MR. LOZANO: It was within a day or so of actually being informed of the accusation.

ASSEMBLYWOMAN MUÑOZ: So that investigation-- Had you already received the background check at that point, or was that subsequent to that date?

MR. LOZANO: Subsequent.

ASSEMBLYWOMAN MUÑOZ: So that investigation would not have been included in the background check.

MR. LOZANO: I'm not 100 percent sure how it would have been captured.

ASSEMBLYWOMAN MUÑOZ: Because, I mean, and you used the word *cursory* background checks. You did cursory-- Can you define what a cursory background check is?

MR. LOZANO: So the firm used publicly reported information; and I do believe an additional level was done in checking individuals -- social media postings and so forth.

ASSEMBLYWOMAN MUÑOZ: Are your employees fingerprinted?

MR. LOZANO: No.

ASSEMBLYWOMAN MUÑOZ: So it's not the same background check that we do with professions such as nursing, etc. It's not a fingerprinted background check.

MR. LOZANO: No; and to be clear, that's a service that I would hope this Committee would recommend for future Transitions. It is not something any previous Transition has ever done; it was something that we instituted to go forward with this Transition, and I hope that in future Transitions they have access to State Police and maybe more in-depth background checks on individuals.

ASSEMBLYWOMAN MUÑOZ: That's all I have for you.

MR. LOZANO: Thank you.

ASSEMBLYWOMAN PINTOR MARIN: Senator.

SENATOR CORRADO: Thank you.

Good afternoon, Mr. Lozano.

*Executive Director of Transition* sounds like an incredibly important job. Were you paid for it?

MR. LOZANO: No, I was not.

SENATOR CORRADO: Do you know who else on the Transition Team was paid? We know that Mr. Alvarez received a salary of \$100,000.

MR. LOZANO: A majority of the individuals on the Transition were paid.

SENATOR CORRADO: *Were* paid.

MR. LOZANO: The majority of the individuals on the Transition were paid, yes.

SENATOR CORRADO: The 70-some employees who were under you on the Transition.

MR. LOZANO: Yes.

SENATOR CORRADO: Okay.

You talked about your responsibility was more for Cabinet positions.

MR. LOZANO: Yes.

SENATOR CORRADO: And so can you explain the hiring process to me? Did you recruit them; they came to you? Four-way background checks were implemented?

MR. LOZANO: Sure. The Cabinet process started with an inquiry with a majority of senior officials within the Campaign; outside folks who were considered experts within the field. We also spoke to previous folks who had served in those positions. We had contact -- the

Governor knew some individuals. And so we put out a large cast net of individuals who were familiar with those fields, and started to recommend, providing a large list of individuals to be considered. We reviewed each of their qualifications to see if there was something that met the standard the Governor was looking for in his Cabinet; and we narrowed it down to a smaller list, and then started the actual interview process, after me asking them if they would like to be considered for the Cabinet position.

SENATOR CORRADO: And so when you say *interview process*, they actually came in, and sat down, and met with someone?

MR. LOZANO: There were moments when either I-- If they were far away, I would have conversations with them on the phone. But yes, at some point or another, they did come in prior to meeting with the Governor-elect himself.

SENATOR CORRADO: So it was a very detailed process.

MR. LOZANO: Yes.

SENATOR CORRADO: So how does Mr. Alvarez decide what job he wants? How does he know that there's a position available at SDA?

MR. LOZANO: I think everyone sort of knows what positions are available in government, and which positions are declared as *unclassified* and are available for appointment at the discretion of the incoming Administration.

SENATOR CORRADO: I'm struggling a little bit with the fact that he picked the job that he wanted in the Administration; that he came to you and said, "I want to be Chief of Staff at SDA."

MR. LOZANO: No, I need to correct that.

Number one, he did not necessarily pick the position; he clearly had conversations with someone else. He did not have them with me, nor did he get my prior approval, because it was not my approval to give.

SENATOR CORRADO: Okay. So who did he have those conversations with?

MR. LOZANO: That's a question for Mr. Alvarez.

SENATOR CORRADO: Okay. A little unfortunate, since he has declined to participate in the hearings.

Okay; so who set Mr. Alvarez's salary?

MR. LOZANO: Again, that's a question for Mr. Alvarez or Mr. McKenna; not me.

SENATOR CORRADO: You are aware that you had sent a text to Charlie McKenna, and he testified to this. You know, you sent the text saying, "Hey, I have your new Chief of Staff." You set up a meeting; put them in touch with each other. They met at Starbucks; he followed up with you. And I believe there was a text about salary as well.

MR. LOZANO: If there was-- I don't set salaries. In no moment at all during the Transition did I have a discussion about a Chief of Staff's salary.

SENATOR CORRADO: Just so you understand, the text was actually from Mr. McKenna; it said, "Met with Al; nice guy. We'll work together well. You and I need to talk salary. Not my salary, by the way; Alvarez's salary," was the follow up. And you replied, "Holla when you can."

MR. LOZANO: Okay.

SENATOR CORRADO: So did you have a discussion with Mr. McKenna?

MR. LOZANO: I don't necessarily recall having a conversation; but that doesn't mean we didn't have one. I just don't recall it.

SENATOR CORRADO: You talk about binders. Mr. Alvarez's main job, for \$100,000, was to put résumés in binders. Did anybody on the Transition Team go through these binders, screen employees, weed out who shouldn't have been employed?

MR. LOZANO: I think you folks need to understand that over 3,000 individuals applied for positions in the new Administration. And so the binders, which were prepared for the incoming Cabinet members, were looked through, were weeded through, and were narrowed down to a certain amount of numbers of positions that were unclassified positions that they had access to hiring.

SENATOR CORRADO: So who was doing that filtering process?

MR. LOZANO: Lynn Haines was a part of it, and there were some other folks who were in the Personnel shop.

SENATOR CORRADO: Was Mr. Alvarez doing that job as well?

MR. LOZANO: Yes.

SENATOR CORRADO: Even though we had been told by Mr. Cammarano he was not going to have any involvement in the hiring process.

MR. LOZANO: Yes.

SENATOR CORRADO: How many people applied over the website?

MR. LOZANO: We received over 3,000 or so résumés.

SENATOR CORRADO: Was there an understanding that if you worked on the Campaign that you were going to get a job somewhere in the Administration? And when I say that, Ms. Brennan testified that her interview was her time on the Campaign. That's what she considered her résumé; her interview was how she performed during the Campaign process.

MR. LOZANO: I think it is fairly customary that if you do well in a Campaign, you proceed forward into a Transition, and you continue forward into an Administration. It's not uncommon.

SENATOR CORRADO: Okay.

When we talk about the background checks that were done on the regular employees -- and when I say *regular*, I'm not being derogatory, I'm just differentiating between them and the cabinet members. So when a background check was done by Genova Burns, did they ever recommend someone not be hired?

MR. LOZANO: I don't recall; I do believe everyone proceeded forward, but I can't necessarily recall.

SENATOR CORRADO: So you're not aware of anybody going through a background check and not being hired.

MR. LOZANO: I'm not aware of anybody, but that doesn't necessarily mean that there wasn't. I'm just not aware of anybody.

SENATOR CORRADO: Were you, at any time, made aware of a list of employees who were must-hires within positions in the Administration?

MR. LOZANO: Are you asking was there a list that said “must hire” of employees?

SENATOR CORRADO: An actual, physical list of names that should be hired.

MR. LOZANO: Hired into the Administration?

SENATOR CORRADO: Yes.

MR. LOZANO: I’m not aware of a list.

SENATOR CORRADO: Did you have anything to do with the hiring of Marcellus Jackson or Derrick Green?

MR. LOZANO: Again, no. My focus was, again, the Cabinet folks.

SENATOR CORRADO: So Mr. McKenna testified that he had a good relationship with you; that you knew each other from before. When you knew the serious nature of the allegations on Mr. Alvarez, did it ever occur to you that you should have let Mr. McKenna know?

MR. LOZANO: No, there wasn’t a thought on that.

SENATOR CORRADO: How about when you found out later -- and I’m not sure exactly when you found out that it was an actual rape allegation that was made by Ms. Brennan -- did you think he should have been told?

MR. LOZANO: I read it in October in the *Wall Street Journal*, like many folks did.

SENATOR CORRADO: In early October of 2018, shortly after the *Wall Street Journal* article came out, did you go on a trade mission trip?

MR. LOZANO: Yes.



SENATOR CORRADO: And can you tell me who was on that trip with you?

MR. LOZANO: The Governor, the First Lady, the Chairman of our Board, and a handful of members of the Choose staff, and a couple of members of the Governor's Office.

SENATOR CORRADO: This was immediately after the *Wall Street Journal* article came out, right?

MR. LOZANO: The trip had been planned for about six-plus months.

SENATOR CORRADO: Right; but the timing was right after the article came out.

MR. LOZANO: Yes.

SENATOR CORRADO: So while you were on this trip with the Governor, were there ever any discussions about the allegation that was in the *Wall Street Journal*?

MR. LOZANO: No.

SENATOR CORRADO: The Governor never asked if you had heard anything about it?

MR. LOZANO: No.

SENATOR CORRADO: Nobody on the trip discussed it?

MR. LOZANO: No.

SENATOR CORRADO: Not one person on this trade trip talked about what was-- The Governor talked about it; he answered questions to reporters. But none of the people on the trip discussed--

MR. LOZANO: No; we had 40 events in 8 days. We were quite occupied.

SENATOR CORRADO: You said that when you -- when this happened, when you were first notified by the attorney -- I believe you spoke with Mr. Cammarano as well about the allegations -- that you were *concerned*. I think that was the word you--

MR. LOZANO: Yes.

SENATOR CORRADO: And then you said you were *puzzled*. What were you puzzled about?

MR. LOZANO: That such a serious accusation would not be brought forward, would not be proceeded by a Prosecutor's Office.

SENATOR CORRADO: What was your relationship with Mr. Alvarez when you were working together on the Transition Team?

MR. LOZANO: A colleague; someone who I've worked with in the past before.

SENATOR CORRADO: Do you know if Mr. Alvarez was aware that people knew that an allegation had been made against him at that time?

MR. LOZANO: I'm not aware of what Al was aware of.

SENATOR CORRADO: Okay.

Thank you; that's all I have.

MR. LOZANO: Thank you.

ASSEMBLYWOMAN PINTOR MARIN: Thank you, Senator. Senator Ruiz.

SENATOR RUIZ: Thank you, Chairwoman.

And I'm sorry if this is redundant. But I'm not quite sure that you -- that this question was answered; but it's in the same vein that Senator Weinberg asked, and Senator Corrado.

So when Mr. Alvarez says to you, “You have a relationship with Charlie; can you reach out. I’m going to be the Chief of Staff,” do you circle back with anybody to be sure that he has this position?

MR. LOZANO: No. I would find it hard and difficult for someone to come to me and just assume that they have a position without getting prior approval.

SENATOR RUIZ: I just find that whole relationship kind of strange. There are a lot of things that appear to have been strange today -- in Committee and in discussion. I just-- It’s almost as if I would walk into your office tomorrow and say, “I’m going to be -- let Sandy Cunningham know I’m going to be her Chief of Staff,” and you wouldn’t circle back. I just-- I think what’s frustrating for many of us on the Committee -- and this is not directed at you, or for a response -- is that there’s this confusion of silos, and these tracks, and these avenues -- that everybody walks alongside each other and nobody ever crossed paths.

When someone comes up to you and says Chief of Staff, either he had the power of authority to say that that’s what it was and you interpreted it that way; or as the Executive Director, I would suspect you should have gone back to check that this person was going in that position.

MR. LOZANO: Again, it would not have been uncommon. Since it was not in my purview to approve or have an authority to hire someone into the Administration, for someone to come to me and state that they had been hired or approved would not have been uncommon. It may sound odd, but it would not have been uncommon during the time.

SENATOR RUIZ: No, that part is not odd.

MR. LOZANO: Okay.

SENATOR RUIZ: And I've worked on campaigns before. That part I don't find strange. But you were the one who reported to Charlie that *this* guy would be his Chief of Staff. And so that to me is where what you're saying doesn't match up with the sentiment of what you're expressing.

MR. LOZANO: Okay. I think to be clear, when I communicated via text to Charlie, it was under the assumption that someone had priorly notified Charlie that he had been hired.

I do not have a habit of just informing someone, via text message, that they are Chief of Staff and who the individual is. That is not something I would have ever done.

SENATOR RUIZ: So you just, based on Al's leadership role during Transition, assumed that someone had decided that he would take that position; and so just followed up with his request.

MR. LOZANO: Yes.

SENATOR RUIZ: A lot of assumptions.

Thank you.

ASSEMBLYWOMAN PINTOR MARIN: Thank you, Senator.  
Assemblywoman Lampitt.

ASSEMBLYWOMAN LAMPITT: Thank you, Mr. Lozano.

Prior, you mentioned that one of your recommendations would be that we state that background checks should be part of the Transition, correct?

MR. LOZANO: Correct, yes.

ASSEMBLYWOMAN LAMPITT: We haven't talked about references, we haven't talked about job evaluations. If somebody was on

the Campaign -- okay? -- they reported to somebody, how would you feel about requiring job references, job evaluations as part of this process? We have no idea how he performed during the Campaign.

MR. LOZANO: It's safe to assume that the individuals who were brought forward from the Campaign to the Transition had to have performed at a level that was satisfactory enough for them to be recommended to the Transition. So it would not have been out of the ordinary to have someone from the Transition then proceed forward into the Administration.

ASSEMBLYWOMAN LAMPITT: Again, *assume*. However, there are a lot of times that, within a background check, certain specific questions can be asked that may not have been suggested before, okay? Did you see Mr. Alvarez being salacious with women? Did you see Mr. Alvarez, you know, doing anything, you know, that would cause a concern? You know, these are the sort of things that you would ask during a reference check.

MR. LOZANO: That is absolutely correct. I would hope that all throughout government, in not only the Executive Branch, but in all branches, that a more formalized process is done with background checks and reference checks. I absolutely recommend that and absolutely welcome that. We tried to bring some sense of process and order to the Transition.

ASSEMBLYWOMAN LAMPITT: How did you feel about this? I mean, we haven't asked you, how did you personally feel when you heard about Al Alvarez's sexual misconduct, sexual harassment allegations?

MR. LOZANO: As a father of two daughters and reading what I read in the *Wall Street Journal*, I was equally as upset as anyone else naturally would be.

ASSEMBLYWOMAN LAMPITT: But you also learned about it early on, really prior to the *Wall Street Journal*.

MR. LOZANO: The details -- absolutely not. It was extremely limited information and an accuser who did not come forward. If we knew what we know now, back then, the world would be different.

ASSEMBLYWOMAN LAMPITT: You run a very progressive organization today. I just was on the website; there are a lot of women who work in your organization. If today somebody came to you and said, "You know, there's this gentleman who, you know -- Sally, you know, feels a little bit uncomfortable around this gentleman because he's following her, you know, to the ladies' room, following her around, you know; she's feeling uncomfortable, okay?" What would you do?

MR. LOZANO: I would investigate; but again, there was an accuser who brought the information forward, and I would have been able to investigate the situation.

ASSEMBLYWOMAN LAMPITT: You wouldn't have used your, sort of, guttural instincts and been able to follow through a little bit further? I mean, what we're hoping today, too, Mr. Lozano, is that those who keep on saying, "My hands were tied; I couldn't have done anything; I didn't know enough" -- that you're also taking away from this experience that there was more to do -- okay? -- and there were more questions to ask, and there was a fire burning and somebody needed to get the hose and put the fire out.

MR. LOZANO: That's right. There were a lot of questions that I would have loved to have asked the accuser.

ASSEMBLYWOMAN LAMPITT: Thank you.

ASSEMBLYWOMAN PINTOR MARIN: Senator?

SENATOR WEINBERG: Yes.

I just want to call your attention to the letter that gives an offer of employment; and I'm assuming this is kind of a form letter that goes to everybody. This is the letter of January 12 to Mr. Alvarez, signed by Lynn Haines, Personnel Director, Transition 2018. And in the letter Mr. Alvarez is being offered the position. And they say that, "The offer of employment is contingent upon the following." Part of it is verification of your right to work in the United States, etc.

The next paragraph is, "Satisfactory completion, in Transition 2018's sole discretion, of a background and reference check for which the required notice and consent forms are attached to this letter, and which forms must be fully completed."

So his employment was contingent upon the Transition 2018 -- of which you were the Executive Director -- of a background and reference check.

Do you know whether there was a reference check?

MR. LOZANO: I don't recall going into that. My role was not to go into the reference checks; my role and responsibility was to ensure that someone else did so.

SENATOR WEINBERG: Nobody seemed to have a responsibility for anything.

It's been a long afternoon.

Senator, did-- Oh, I'm sorry.

ASSEMBLYWOMAN PINTOR MARIN: Senator Oroho.

SENATOR OROHO: Yes.

Thank you, Madam Chairwoman.

Mr. Lozano, thank you very much for being here this afternoon.

As far as -- for the Transition Team itself, was there like an Executive Committee or a Leadership Team?

MR. LOZANO: There was a Leadership Team that constituted of the individuals -- the heads of each of the divisions; so the Chief of Staff designee, Chief Counsel designee. As folks started to be announced as designees for the new Administration they took on more and more responsibility.

SENATOR OROHO: Was a Derrick Green a member of the Leadership Team?

MR. LOZANO: I'm sorry?

SENATOR OROHO: Derek Green?

MR. LOZANO: Yes, he was a member of the Transition Team.

SENATOR OROHO: Joe Kelley?

MR. LOZANO: Yes, he was.

SENATOR OROHO: Marcellus Jackson?

MR. LOZANO: I do believe he was.

SENATOR OROHO: Al Alvarez?

MR. LOZANO: Yes.

SENATOR OROHO: So they were all members of this Leadership Team, this Transition--



MR. LOZANO: No.

SENATOR OROHO: No?

MR. LOZANO: No; you asked were they on the Transition Team, not on the Leadership--

SENATOR OROHO: Oh, they were-- Okay. But not on the--

MR. LOZANO: There's a difference.

SENATOR OROHO: They were on the Transition Team.

MR. LOZANO: They were members of the Transition, yes.

SENATOR OROHO: Okay; I got it. Thank you.

Some of the information we have gotten from the Administration -- it shows, what I will refer to as, like, a daily briefing that goes to the Governor, and it must go to his staff. And it's a pretty detailed briefing, and it also makes references to things that could be embarrassing; things that the Governor needs to know. Was there any kind of daily briefing that the Transition would give to the Governor?

MR. LOZANO: There were briefings that were provided to him, as it related to the events and the meetings of the next day.

SENATOR OROHO: Okay. And right around this time, in December -- I guess right around December 3 -- you had found out about this serious allegation. And it's been termed a *serious wrongdoing* -- by other people who have testified -- of a senior official. But I just want to make sure-- We now know it's a serious event; but the Governor-- And the Governor gets a daily briefing of some sort, or meeting. But nobody brought this up.

MR. LOZANO: To be clear, again, I do believe that the briefings he received were to inform him of the events of the next day.

SENATOR OROHO: But this was something that somebody was concerned about, that if it gets leaked to the press that it could be damaging to the Governor; and nobody spoke to him. And it's your testimony nobody spoke to him about it. He was never told.

MR. LOZANO: I never spoke to the Governor about this.

SENATOR OROHO: The background checks-- And Senator Weinberg did an excellent job in going through what was available. I've heard these things called a -- what do they call it, a *four-way background check*?

MR. LOZANO: A four-way background check is something that is designated for Cabinet members and for members who are advise and consent of the Senate.

SENATOR OROHO: Okay.

MR. LOZANO: Like I recommended before, just shortly before, I would hope that this Committee could recommend the accessibility of, maybe, the State Police or the Attorney General's Office to perform adequate background checks, in something that's more conformed and consistent to State employees.

SENATOR OROHO: So let me ask you a-- As the leader of the Transition, someone who is now putting in place the Cabinet members; senior people who the Governor will rely upon for his term in office-- There's now a very serious allegation about someone who you now know. Don't you think it was in your purview to go a little bit further, whether it be the special background check or call for a four-way check?

MR. LOZANO: I do not believe that that was something that was made available to the Transition. The four-way background checks was something that was designated for Cabinet appointees.

SENATOR OROHO: Yes, but you're going, but you're doing-- So at this time, were you doing four-way background checks on Cabinet-level -- perspective Cabinet-level employees?

MR. LOZANO: We performed -- we requested the Attorney General's Office to do a four-way background check on Cabinet members; individuals who go before you--

SENATOR OROHO: Right.

MR. LOZANO: --in front of you, for advise and consent.

SENATOR OROHO: But was there a prohibition or was there any kind of thing stopping you from having a four-way background check on somebody who has a very serious allegation of sexual assault?

MR. LOZANO: I don't believe that that is a service that was ever extended nor provided to us. But I would hope in the future it would be.

SENATOR OROHO: But you think in the future that's something we should absolutely do?

MR. LOZANO: Absolutely, 100 percent.

SENATOR OROHO: Okay. And there was nothing that you knew of stopping anybody from saying-- Everything we hear about this, we have the availability to do. The State Police could do a four-way background check, and nobody asked.

MR. LOZANO: Again--

SENATOR OROHO: There was no prohibition.

MR. LOZANO: Again, that does not -- that was not a service that was extended to the Transition. Again, it should be formulated, and again-- And I would really hope that the access to the Attorney General's

Office and to State Police for background checks would be something that would be offered to future Transitions.

SENATOR OROHO: Besides counsel today, did you discuss your testimony in preparation with anybody from either the Campaign, or the members of the Transition, or the Administration?

MR. LOZANO: No, just counsel.

SENATOR OROHO: Just counsel; all right.

You're the CEO of a major organization, right?

MR. LOZANO: Yes.

SENATOR OROHO: Choose New Jersey. You've been in many high-ranking positions before that, correct?

MR. LOZANO: Correct.

SENATOR OROHO: Have you ever heard the issue of *the tone at the top*?

MR. LOZANO: I'm sorry?

SENATOR OROHO: Did you ever hear the term *the tone at the top*?

MR. LOZANO: Yes.

SENATOR OROHO: So you are very familiar with that.

MR. LOZANO: Yes.

SENATOR OROHO: Okay. Basically what it says is that, you know, policies and procedures are great; but if you don't have the right tone set at the top, you can have the best policies and procedures, and it doesn't matter.

Was there any kind of discussion about what was the ethical tone or what was the right tone from you, as the head of the Transition

Team; or the Governor, as the head of his new Administration? I mean, what was the kind of the environment where people felt that they couldn't talk to the Governor; the lead CEO, the Governor-elect for the State of New Jersey -- that they couldn't tell him about this serious allegation?

MR. LOZANO: During the--

SENATOR OROHO: What kind of tone was there?

MR. LOZANO: During the Transition, on multiple occasions I would call staff meetings and we would discuss things that were going forward. And on multiple occasions I made very clear to the staff that unacceptable behavior would not be tolerated; and if at any point or another, anyone shared any sort of concerns on behavior, that my door was always open; that the Senior Counsel's office was open; and that there were individuals who had an open-door policy.

SENATOR OROHO: But there was a situation -- where it's now been over 20-something months -- when a serious sexual assault allegation occurred. Everybody has said they believed Katie Brennan; she was absolutely believable in her testimony. But yet nobody took any kind of action. And the most serious thing you can have-- As I see it, the policies and procedures -- there are plenty of them; they're here. Nobody followed them. And it seems as if the victim was the one who wasn't being protected, or given the ability-- And what kind of tone does that set? I just don't get it. So anybody that -- you would set a tone that anybody should be able to come in and talk about any kind of serious allegations. But yet it didn't happen with Mr. Alvarez.

MR. LOZANO: So again, to be clear. The accuser never came forward. So it's very difficult to act on something when you do not have

details, nor the information, nor the accuser to come forward to investigate or proceed forward.

SENATOR OROHO: But at the time-- We've heard from the Administration; Mr. Critchely had said where-- Because the actions occurred during the Campaign, the Administration couldn't do it; I guess because it didn't happen during the Transition, the Transition Team couldn't do anything. And we had a gentleman who continued in his employment, and got a very good job and a very big raise. So I just find it hard; I just find it extremely hard to believe that you have 90 percent of--

You do -- (indiscernible), sir; you Google *tone at the top*, and you'll get tons and tons of studies and surveys done by major companies. It all started with the whole thing called the *Treadway Commission* back in the 1980s. And the number one thing they said was the establishment of the tone at the top is the most critical thing that we have. And what I see here is, we can talk about the policies and procedures until we're blue in the face, and if we don't have the ability or the right tone set, where somebody can come in and action be taken-- We can write these policies on as many pages as we want, and nothing's going to happen. And that's exactly what happened here.

MR. LOZANO: Senator, if I can just address that.

I agree with your comments on the tone. But again, to rehash the details-- Second-hand information came forward to the Transition of a sexual assault of an accuser who would not come forward, and a prosecutor who did not proceed with charges. I'm not 100 percent sure what the true expectation is, at that point, to investigate something with no facts or information, and a prosecutor who is not proceeding forward.

I don't believe it's a tone issue; I just think it's a factual and information issue.

SENATOR OROHO: It seems as if people didn't want to take that extra step. If it's true that people didn't tell the Governor, I, quite frankly-- If I was the Governor sitting there, I would not have said, "My staff did everything that was right." Because you have a serious allegation here, and no one told him.

And then we come to find out that all these other individuals knew what was going on, but didn't take that extra step; or didn't even do that extra step of a four-way background check that you were in charge of for Cabinet-level positions. I don't see why there would be any kind of prohibition-- And I appreciate your recommendation that that be something that goes forward from here. But also the recommendation has to go forward that when you get a serious allegation like this, the tone has to be set. That victim, to me, is the one who got the least amount of protection. The employee got all the protection, and the one employee who had a very serious event occur to her, sexual assault, she was left in the dark.

MR. LOZANO: She was not left in the dark in the Transition, because the accuser did not come forward. Something else would have been done if the accuser had come forward.

SENATOR OROHO: Well, it looks like she came forward to a few people.

Thank you.

ASSEMBLYWOMAN PINTOR MARIN: Assemblyman Johnson.

ASSEMBLYMAN JOHNSON: Thank you, Madam Chair.

I just have a quick question. Senator Oroho covered a few points I wanted to bring out, or to ask.

The Transition Team -- you said it starts the day after the election?

MR. LOZANO: Yes.

ASSEMBLYMAN JOHNSON: And ends?

MR. LOZANO: Upon the swearing in--

ASSEMBLYMAN JOHNSON: The swearing in--

MR. LOZANO: --of the Governor.

ASSEMBLYMAN JOHNSON: How long a period is that?

MR. LOZANO: Seventy days; 43 days if you just do business days.

ASSEMBLYMAN JOHNSON: So it's about 70 days.

MR. LOZANO: That's correct.

ASSEMBLYMAN JOHNSON: So during that period of those 70 days, you have 70 people working under you on the Transition Team.

MR. LOZANO: Correct.

ASSEMBLYMAN JOHNSON: All right? Seventy people.

And you had daily meetings; I guess staff meetings, like was brought up before?

MR. LOZANO: There were staff meetings, yes.

ASSEMBLYMAN JOHNSON: And during these staff meetings did this incident ever come up as a topic; I mean, during these staff meetings?

MR. LOZANO: No.



ASSEMBLYMAN JOHNSON: No? So you have a person who you're sending to SDA to see Mr. McKenna, but the allegation -- even though there's no complainant at this time, as you kept saying -- but the story is still there, but that was not. You didn't bother to transfer any of this information on to this new employer or boss, so to speak.

MR. LOZANO: This would not be something that would be discussed in a staff meeting of 70 individuals.

ASSEMBLYMAN JOHNSON: But yet you had a circle of three or four individuals who were, like, your direct reportees?

MR. LOZANO: I did have, with direct reports--

ASSEMBLYMAN JOHNSON: Right.

MR. LOZANO: --in which we then-

ASSEMBLYMAN JOHNSON: Would you discuss--

MR. LOZANO: It was mostly what are the issues of the day.

ASSEMBLYMAN JOHNSON: Would it have been discussed with them?

MR. LOZANO: No.

ASSEMBLYMAN JOHNSON: Okay.

That's all I have; thank you.

ASSEMBLYWOMAN PINTOR MARIN: Assemblywoman DeCroce.

ASSEMBLYWOMAN DeCROCE: Thank you, Chairwoman.

Just a few questions.

Who's currently -- do you know who the Appointment Secretary is for the Governor right now?

MR. LOZANO: No.

ASSEMBLYWOMAN DeCROCE: Okay; because my question and reasoning for that is, did that individual serve in the Transition Team. So we don't have that information; we should get that information to see what the policies and procedures are, according to the Appointment Secretary, who serves at the will of the Governor right now.

A few things that have been said here, pertaining to adequate background checks, policies and procedures. Assemblywoman Lampitt talked about policies and procedures; and they're things that we're here to talk about. We've also talked about tone at the top. You know, I sit here and I see lack of common sense; I see a lack of understanding government.

And so I think about policies and procedures and what we need to recommend out of here.

Have you ever heard of the Partnership for Public Service out of Washington, D.C.?

MR. LOZANO: Vaguely familiar.

ASSEMBLYWOMAN DeCROCE: Okay; well, this is what they do. Their mission is to inspire a new generation of civil servants to transform the way we do government. And they take individual appointees, who are going to be appointed, and they mentor them and they train them for the positions so they know what they're doing.

And instead of political appointments and dealing with what we are, here in the State today, I think this is something that we all should take a look at and maybe invite them in to New Jersey to see what they have to say. Because, you know, we need to do something to fix things, and this may be just one way we can help it.

So that's all I have to say right now.

Thank you.

ASSEMBLYWOMAN PINTOR MARIN: Mr. Lozano, thank you.

If we can just-- Before we move on to the attorneys, I just have -- not really a question, Mr. Lozano; and I don't want to get--

My concern is -- and I can tell that part of this bothers you in the sense that you made a prior statement that you have two young girls, right?

MR. LOZANO: I do.

ASSEMBLYWOMAN PINTOR MARIN: And my only concern is, I think that you think that there was a responsibility -- and you don't have to answer this -- but unfortunately, even though when you say, "We didn't know who the accuser was," it didn't really change the fact that no one *a)* told the Governor, and *b)* no one called him in -- the accuser, right? -- the person who was being accused of doing this act, which was Mr. Alvarez; no one just had conversations. And I think that, from what we've been hearing here today, it's just concerning to us.

And I get that a part of it is out your hands -- right? -- and you did what you thought was the best thing at the time, given the advice that you were given. I think that to all of us here, it's just heartbreaking to hear that, at every single level and every step, there was just no follow-up.

So, Mr. Hayden.

MR. HAYDEN: Good afternoon, Mr. Lozano.

By the way, one correction of your testimony. You did talk to somebody else in preparation for your testimony, aside from your attorney.

You were kind enough to talk to Mr. Critchley and myself when we asked to, as to your knowledge of the facts.

MR. LOZANO: I did say *counsel*. (laughter)

MR. HAYDEN: Oh, very good. But the truth is, you were kind enough to answer every question that we asked you in preparation for your coming here today.

MR. LOZANO: Yes.

MR. HAYDEN: And was the appointment to the Transition Team the first Transition team you were involved in?

MR. LOZANO: No; I had served in a previous Transition.

MR. HAYDEN: Which Transition?

MR. LOZANO: Governor Corzine's.

MR. HAYDEN: And what position did you serve in Governor Corzine's?

MR. LOZANO: I was a Policy Advisor, and I supported the senior leadership in a couple of operational roles.

MR. HAYDEN: Was it a paid position?

MR. LOZANO: At the time, I think I had volunteered. I don't think I was paid then, nor was I paid this time.

MR. HAYDEN: Was it supervisory at the Corzine level?

MR. LOZANO: No.

MR. HAYDEN: Now, you were first told that you would be in charge of Transition -- I believe you told us right after Labor Day, prior to the election; and you were formally appointed immediately after the election?

MR. LOZANO: Correct.

MR. HAYDEN: And obviously you had a lot to deal with, in terms of setting up the team. But when December 1 came about, and Katie Brennan authorized Justin to tell Transition Counsel, who then told Peter Cammarano, about a sexual assault; and they brought you into the picture because you were head of Transition -- that was a very serious matter, was it not?

MR. LOZANO: Correct; my understanding was that Ms. Brennan did not give-- I was told that Ms. Brennan did not give permission to Mr. Braz to come forward.

MR. HAYDEN: Well, that was not her testimony.

MR. LOZANO: But it is mine.

MR. HAYDEN: It was your understanding-- Well, even with Mr. Braz coming forward and talking to Transition Counsel, talking to Mr. Cammarano, and they brought you into the loop, you had to consider it a very serious matter that there was actually a criminal investigation and there could even be charges filed.

MR. LOZANO: Again, at the time that it was brought forward, I was told that Mr. Braz was not given permission to disclose not only her name, but the actual accusation; and that she was not going to come forward. It was within a day or so, is when we find out that the Prosecutor's Office was not proceeding forward with any sort of charges.

MR. HAYDEN: But when you were first told, there was an open criminal investigation; and then it was a day or so later you found out that a decision had been made.

MR. LOZANO: Correct.

MR. HAYDEN: Mr. Braz thought it was important enough, and to some extent he says without the permission of the victim, to come forward and tell somebody about it, because there was the potential for criminal charges, correct?

MR. LOZANO: Correct.

MR. HAYDEN: And a little while later on, a couple of days later, you found out that the nature -- that there were not going to be criminal charges, but you knew that the potential charge was sexual assault.

MR. LOZANO: Correct.

MR. HAYDEN: Now, you were aware, given the gravity of the situation, being a father, being the climate of the times with *me too*, that this was something that had to be reflected upon as to how the Transition and the Campaign would handle it, so you sought legal counsel, the Counsel to the Transition.

MR. LOZANO: Correct; legal counsel came to me and I asked legal counsel, "What is the appropriate thing to do here?"

MR. HAYDEN: Now, you had a number of options; one of the options would be somebody could go back to Mr. Braz and say, "Would you talk to the person who told you about it; tell that person that the Transition Committee is very interested; and is there any chance that she would reconsider and talk to us?" That was one option, wasn't it?

MR. LOZANO: Yes; and I would defer to Transition Counsel, but I do believe that was something that was discussed.

MR. HAYDEN: It was discussed, and was it ever acted upon, or was that alternative rejected?

MR. LOZANO: No, it was discussed with the intent that Counsel would try to go back to Mr. Braz to ask Ms. Brennan, at the time, to come forward.

MR. HAYDEN: Do you know whether or not Counsel ever went back to Mr. Braz to ask Ms. Brennan to reconsider?

MR. LOZANO: I defer that question to the Counsel.

MR. HAYDEN: Well, I'm just saying, to your knowledge were you ever told whether or not he went back?

MR. LOZANO: I would assume he would, but I'm not 100 percent. I don't recall him going back; I don't recall finding out the information that he went back and spoke to Mr. Braz.

MR. HAYDEN: Now, another option would be that you could say that the mere-- By the way, were you aware that the accuser was somebody involved with the Campaign?

MR. LOZANO: I was not aware of that.

MR. HAYDEN: Mr. Braz, as far as he told you, never related the fact that the accuser was somebody who was active in the Campaign and was involved in the Transition?

MR. LOZANO: Mr. Braz went to Mr. Cammarano and Mr. Parikh.

MR. HAYDEN: But in terms of who the accuser was, although the accuser was not identified by name, were you aware whether or not the accuser was involved with the Campaign?

MR. LOZANO: I was not aware that the individual had served on the Campaign at all.

MR. HAYDEN: Well, when the procedure was put in place to make sure that Mr. Alvarez did not abuse his power in the hiring process against the accuser, or abuse his power, that somehow suggests that there was at least an understanding that the accuser was part of the Campaign and was trying to get a job.

MR. LOZANO: We had over 3,000 individuals who applied for positions with the Administration.

MR. HAYDEN: So you're saying that although there was a limitation put in place with respect to what powers Mr. Alvarez had in terms of the hiring process, or the screening or interview process, you realized that that had to do -- to make sure that he didn't retaliate against the accuser.

MR. LOZANO: Correct.

MR. HAYDEN: So the understanding was, then, in terms of trying to stop the retaliation, that the accuser was going to apply for a job, and the accuser might be part of the Campaign.

MR. LOZANO: That was not an assumption that was made. Again, over 3,000 individuals applied; I think it was a safeguard that was put in place.

MR. HAYDEN: Now, you heard the testimony, I believe, earlier, of Mr. Berkon, that he considered the hiring -- leaving somebody in the office in the wake of the nature of the allegation as *untenable*. You actually were sitting here and heard it, did you not?

MR. LOZANO: I was in and out of his testimony, so I apologize.



MR. HAYDEN: Well, if I represent to you that he indicated that in June he came in and he advised Mr. Platkin that to leave somebody in public office with this type of allegation in front of them -- facing them was untenable, and that person had to be asked to leave; and he also told this Committee that if he had been consulted in December about whether or not to hire somebody with this allegation over them, he would have offered the same opinion -- does that, in any way, cause you to reevaluate, with the benefit of hindsight -- and I fully recognize, sir, we're talking about the benefit of hindsight -- the way this was handled?

MR. LOZANO: With the benefit of hindsight, Mr. Berkon was aware of the accuser and some details of the case in June, which was not available at the time in December.

MR. HAYDEN: So that he indicated he would have made the same advice in December, though -- he told us -- that he gave in June. That it's untenable to keep somebody in a State position with a rape allegation against them.

MR. LOZANO: Well, he was not Counsel to the Transition. I relied on Counsel -- the Transition Counsel.

MR. HAYDEN: So it was not decided. Nothing happened and that back to Katie Brennan. Nothing happens that there was any decision not to go forward, because it's untenable. There was a limitation put on the role of Mr. Alvarez in the Transition, in connection with hiring; and there was also a special background investigation?

MR. LOZANO: Again, I'm not aware of what a special background check is; I am just aware of what a background check is.

MR. HAYDEN: Well, did you tell us that you were told by the Counsel that there was going to be a special background check of some kind?

MR. LOZANO: No; he was getting a background check. The word *special* did not come up in any sort of conversation that I was privy to.

MR. HAYDEN: There was an e-mail that would have gone to the-- Did you get an e-mail from Parikh that there would be a special background check?

MR. LOZANO: I'm not aware of any e-mail stating that there would be a special background check.

MR. HAYDEN: Counsel will pull it out.

In terms of the background check that was done for the subcabinet positions -- most of it was really just a public records check, was it not?

MR. LOZANO: Correct.

MR. HAYDEN: I mean, it's a very shallow background check, if all we're talking about are lawsuits, arrests, convictions of record; as opposed to allegations or claims of the nature we have here. Looking back on it, this was -- as was done with respect to Mr. Alvarez -- a very limited background check.

MR. LOZANO: It was still more of a background check than any previous Transition has ever had.

MR. HAYDEN: That's not the question, though, whether it was more-- The question is how good it was, and whether or not-- And here's the real question: Was it substantial enough for the situation you found yourself in? That's the question, is it not? Not, was it better than

what somebody else did; isn't the real question, was it substantial enough for the situation you found yourself in, given the allegation?

MR. LOZANO: Given the limited resources we had, I believe that this was the best resource we had to actually perform a background check. I wouldn't know how to proceed with anything further without the support of the Attorney General's Office or the State Police.

MR. HAYDEN: Well, this was, though -- there was no other candidate for office, as far as we know; and it's a serious position, Chief of Staff -- who had a sexual assault/rape allegation against them, that was of recent origin, and which was actively investigated by a law enforcement agency. That's the only situation you had, in terms of the entire Transition, wasn't it?

MR. LOZANO: I'm sorry, what was the question again?

MR. HAYDEN: I said, this was a special case because it was the only case of a potential appointee who had a rape allegation, sexual assault allegation against them that was investigated by law enforcement agencies.

MR. LOZANO: That is correct. This was the only accusation of this nature in the Transition.

MR. HAYDEN: Although you had -- you did not have unlimited resources, you had the right to ask the Attorney General or the State Police to do an investigation and, perhaps, talk to somebody in the Prosecutor's Office in question and find out what happened with this; what was the nature of the allegation.

MR. LOZANO: We deferred to Counsel on the best approach on this. And secondarily, a Prosecutor's Office investigated this. I'm not

sure how a Transition would have additional resources beyond a Prosecutor's Office to investigate such accusations.

MR. HAYDEN: Well, the Attorney General supervises the Prosecutor. You could have gone to the Attorney General and asked the Attorney General to talk to the Prosecutor's Office to find out how valid this is; how serious this is, which could be a predicate as to whether or not you were going to conduct your own investigation.

MR. MARINO: Mr. Hayden, is the question of whether Mr. Lozano should have done that, or whether Mr. Parikh should have done that?

MR. HAYDEN: The question is whether the individuals looking at this live allegation had the ability to at least ask the Attorney General, or ask the State Police, to investigate a rape allegation for a potential appointee in more detail than the normal background check.

MR. LOZANO: That was never an option that was afforded to me.

MR. HAYDEN: And that was never an option that you really discussed trying to do though, either.

MR. LOZANO: It was not something that was afforded to me, or recommended, or offered.

MR. HAYDEN: I mean, looking back-- And I recognize we're looking back. This is not us accusing one another; it's trying to find out, going forward, what the options are. Perhaps you could have talked to Justin about going back to the accuser; perhaps you could have conducted your own investigation, because the allegation was rape; or perhaps you could have had a much more detailed special investigation of this appointee,

given the potential that he might get a job where he is supervising other women. You could have done more.

MR. LOZANO: We did what we thought was right, given the current information at hand.

MR. HAYDEN: What I was thinking of -- in Mr. Cammarano's statement he indicated the Transition's outside legal counsel said he would perform a special background check on Mr. Alvarez to see if anything came up. Now, the question is, that was not your statement; does that refresh your recollection that in the discussions there were discussions that a special background check would be done, as opposed to the usual background check.

MR. LOZANO: I am unaware of anything special that was done.

MR. HAYDEN: And given the benefit of hindsight, do you think more should have been done? Going forward, more should be done when appointing authorities and transition teams are faced with an allegation like this.

MR. LOZANO: Yes.

MR. HAYDEN: Now, you knew that Mr. Alvarez was looking for an appointment -- we're on December 1, but you knew he was looking for an appointment; he was going to get an appointment. And I believe you indicated the principal appointing authorities -- or *decision-makers*, I guess is the right word -- would either be Mr. Cammarano or Mr. Platkin.

MR. LOZANO: Correct.

MR. HAYDEN: As far as you knew, Mr. Platkin-- Did you know whether or not, prior to the inauguration, Mr. Platkin was aware of this allegation?

MR. LOZANO: I don't recall ever having a conversation with him.

MR. HAYDEN: Do you think that he should have been advised, prior to the appointment of Mr. Alvarez, about the allegation of sexual assault that was actively investigated by a Prosecutor's Office?

MR. LOZANO: All I know is I didn't have a conversation with him. I'm not sure -- I can't speak on anyone else's behalf to say if they did or did not have a conversation with him.

MR. HAYDEN: That's what-- You have no knowledge of the conversation, correct. Do you think, though, in fairness, if Mr. Platkin was to be the appointing authority, he should have been advised as to the allegations and the fact that there had been an active investigation?

MR. LOZANO: Yes.

MR. HAYDEN: Now, Mr. Alvarez is appointed; he's going to be Deputy Chief; and he comes to you and he asks you, "Could you give me an interview with Mr. McKenna?"

MR. LOZANO: No; he asked me for an *introduction* to Mr. McKenna.

MR. HAYDEN: For an introduction to Mr. McKenna. And at that time, I assume you thought the appointment was a *fait accompli*; it was a done deal.

MR. LOZANO: Correct.

MR. HAYDEN: And you did, in a casual sense -- and I don't say that critically -- you send a text message, which we talked about, to Mr. McKenna; you asked him to sit down with the new employee.

And it's been touched on by other members of the Committee -- don't you think you should have told Mr. McKenna that the person who will be his new Chief of Staff had an allegation of sexual assault, and had been actively investigated by law enforcement agencies?

MR. LOZANO: That was not something for me to decide on.

MR. HAYDEN: But you were friendly with Mr. McKenna.

MR. LOZANO: Yes, yes, of course.

MR. HAYDEN: I mean, in the political world, in the job world, sometimes you give a friend a head's up. "By the way, I think you should know that at least there is a serious allegation out there about this guy, for whatever worth it is to you."

Don't you think that should have been done to McKenna?

MR. LOZANO: It could have, but it wasn't.

MR. HAYDEN: If I were to represent to you that when Mr. McKenna was here, he told our Committee that he would have liked to have known it before he was involved in the hiring of this man to be his Chief of Staff, because it had to go through his Authority, and he might at least have weighed in as to the propriety of it -- does that change your opinion?

MR. LOZANO: I would have liked more information as well on the situation, and on the accusations.

MR. HAYDEN: And certainly, if you were in that position -- and you may be in a similar position now -- where you have somebody with

a sexual assault allegation against them in a supervisory position involving females -- the top person should at least have a head's up as to problems -- potential problems of the person who's going to be the supervisor, shouldn't they?

MR. LOZANO: I would like to have known.

MR. HAYDEN: And Mr. McKenna was not told.

And by the way, if we just think of what -- the lawsuit that would have occurred if there were an allegation, or something happened a second time, in terms of the legal jeopardy-- Because the appointing authority might have been charged of knowledge of the situation.

But again, were here to look at better practices. And it is not to cross-examine you, Mr. Lozano; it is to look about what happened and look for better practices, in terms of examining step by step.

MR. MARINO: But this is a little bit of a cross by you, Mr. Hayden, in fairness.

MR. HAYDEN: I'm calling this *exploration*. (laughter)

MR. MARINO: Good.

MR. HAYDEN: I would call it exploration, because we're trying to find out what happened to see how we can do better.

That's all I have; thank you.

MR. CRITCHLEY: Good afternoon.

Before I--

SENATOR WEINBERG: Mr. Critchley, just before--

MR. CRITCHLEY: Sure.

SENATOR WEINBERG: When we finish with Mr. Lozano, we do have one more witness, with Lizette Delgado-Polanco, because her



attorney has come from out of town, if I'm correct. So we would like to -- if everybody is willing to stay -- try to finish that today.

Is that all right with you? You want to wait until we--

Okay; go ahead.

I'm sorry, Mike; go ahead.

MR. CRITCHLEY: You may have heard me ask questions of the previous witness regarding inconsistencies in testimony that we've heard over the past few days.

And when I ask these questions of you, I don't want you to think of them of them as an *Ad hominem* attack, because I realize the information you're giving, basically, is second-hand--

MR. LOZANO: Right.

MR. CRITCHLEY: --because you don't have a first-person knowledge. So it only can be as accurate as what you've heard. Are you with me?

MR. LOZANO: Correct.

MR. CRITCHLEY: But just for accuracy, when Ms. Brennan testified as to what Mr. Braz was allowed to tell the Transition Counsel on December 1, in essence -- my words, not yours; and correct me if I'm wrong -- you understood that he was not -- meaning Mr. Braz -- was not authorized to discuss anything about this.

MR. LOZANO: Correct.

MR. CRITCHLEY: Okay. Now, this is what Katie Brennan testified.

"I allowed my friend on the Transition Team, Mr. Braz, to alert Transition Counsel about Mr. Alvarez's potential arrest. It is my

understanding that Mr. Braz conveyed the substance of my allegations without conveying my name.”

Ms. Brennan, basically, said she authorized him to discuss the allegations she had made, but what she asked him to do was, “Please, do not give my name.”

The second thing I would point out-- And she had first-person knowledge, so she’s the person who’s conveying the information.

MR. MARINO: Mr. Critchley.

MR. CRITCHLEY: Yes.

MR. MARINO: Do you want Mr. Lozano to respond with what his understanding was?

MR. CRITCHLEY: Yes; once I just finish this.

MR. MARINO: All right.

MR. CRITCHLEY: And now, Mr. Braz, who also communicated the information, testified, “So with Katie’s authorization, I reached out and spoke to the Transition’s Counsel, Raj Parikh; and then to Pete Cammarano, the incoming Chief.”

And all I’m pointing out is that, understandably, there’s a little bit of an inconsistency as to what you understood and what they testified to. Is that correct?

MR. LOZANO: Correct.

MR. CRITCHLEY: Okay.

Now, you also testified that there were no charges filed, correct?

MR. LOZANO: Correct.

MR. CRITCHLEY: Did you have any official notice of that, or is that, again, relying on second-hand information?

MR. LOZANO: Second-hand information.

MR. CRITCHLEY: Did anyone make any effort to clarify whether, in fact, that statement was accurate?

MR. LOZANO: No, I'd like to assume that the advice and the information that was provided to me by Counsel is accurate.

MR. CRITCHLEY: Do you know where Counsel got that information?

MR. LOZANO: No, I am unaware.

MR. CRITCHLEY: Did they get the information, basically, on--

MR. LOZANO: I apologize; let me go back.

I do believe that Mr. -- that our Counsel received the information from Mr. Braz.

MR. CRITCHLEY: From Mr. Braz. So you have three levels of hearsay before you get it. You have, apparently, Ms. Brennan, who you don't know, telling Mr. Braz; then Mr. Braz telling Parikh; then Mr. Raj Parikh telling you. So that's multiple levels of hearsay before you get it, correct?

MR. LOZANO: Correct.

MR. CRITCHLEY: And we don't know, in terms of if anyone ever took any official action to make a determination as to whether officially there had been no charges filed. We're just relying on hearsay information.

MR. LOZANO: Correct.

MR. CRITCHLEY: That's a thin reed to rely on, would you agree?

MR. LOZANO: No.

MR. CRITCHLEY: Okay; all right. That's fair enough. Now, you also said that the accuser did not come forward, correct?

MR. LOZANO: Correct.

MR. CRITCHLEY: Well, that's partially correct and partially incorrect. I mean, she came forward very forcefully, we now know, to the Hudson County Prosecutor's Office; and she did not hide. She said "I am Katie Brennan," under oath, "I'm accusing Mr. Alvarez of rape; a high-ranking member of the Administration." You don't know that, but in effect, we now know that's what she did, correct?

MR. LOZANO: It's what we know now; we did not know then.

MR. CRITCHLEY: But you did know then, apparently, she had to go to a law enforcement agency to file a complaint for them to dismiss the allegation, as you understood.

MR. LOZANO: Correct; but she never came forward in the Transition.

MR. CRITCHLEY: I understand that.

So now we have information that this woman made an allegation to a Prosecutor's Office; she had no problems telling the Prosecutor that Mr. Alvarez raped her. Were you concerned as to why this woman would have no reluctance to tell the Hudson County Prosecutor's Office, but she apparently had some reluctance to tell the incoming Murphy Administration about what went on? Did that trouble you?

MR. LOZANO: It's the part that I stated before -- that I was puzzled that the individual did not come forward.

MR. CRITCHLEY: But she did; but I'm saying--

MR. LOZANO: No, she did not.

MR. CRITCHLEY: Listen to what I'm saying.

MR. LOZANO: I'm listening.

MR. CRITCHLEY: Okay. She came forward to the Prosecutor's Office, correct?

MR. LOZANO: Yes.

MR. CRITCHLEY: She didn't come forward to the Murphy Administration, correct?

MR. LOZANO: Correct.

MR. CRITCHLEY: Do you want to question why she would choose to come to the Prosecutor's Office and not the Murphy Administration?

MR. LOZANO: I think that's a question for Ms. Brennan, not me.

MR. CRITCHLEY: Well, I'm asking you. You have people who found out about this information that she had made allegations against Mr. Alvarez. Did you, or Mr. Cammarano, or Matt Platkin, or Raj Parikh question why she's not coming forward, even after she went forward with the allegation to the Hudson County Prosecutor's Office?

MR. LOZANO: It's a question I still have today.

MR. CRITCHLEY: I'm sorry?

MR. LOZANO: It's a question I still have today.

MR. CRITCHLEY: Okay. So, I mean, we do know she was not reluctant to testify, because she testified under oath. She was just reluctant to testify or give her name to the Murphy Administration. Did that raise a question in your mind?

MR. LOZANO: It's still a question in my head, right this single moment, on why she didn't come forward in the Transition.

MR. CRITCHLEY: Did you ever think, "Well, you know something? This allegation she's making -- she's not making this allegation against some low-ranking individual who is insignificant in the Campaign. She's making this allegation against a high-ranking member of the Transition; a person who is the Deputy Director of Personnel; who was previously employed by the Campaign, Murphy for Governor; who was previously employed with New Way for New Jersey; who personally worked for Phil Murphy. Were you concerned that she might be afraid to go public because there could be retaliation against her going against this high-ranking member of the Administration?"

MR. LOZANO: That is a question for Ms. Brennan; but I have no clue how one could assume that there would be any sort of retaliation on the Transition when I don't even know the individual.

MR. CRITCHLEY: Well, do you know that she sent a letter saying that she didn't want him to be involved in any decision regarding her employment?

MR. LOZANO: I was unaware of such a letter.

MR. CRITCHLEY: But you did know that she was seeking a job in the Administration, meaning Ms. Brennan?

MR. LOZANO: I don't even know who she is.

MR. CRITCHLEY: Did you know the person who made the accusation was seeking a job in the Administration?

MR. LOZANO: No, because I didn't know who the individual was.

MR. CRITCHLEY: I didn't say the individual's name. Did you know there was someone who made the allegation--

MR. LOZANO: Actually, no.

MR. CRITCHLEY: Let me finish please -- who made the allegation, charging Mr. Alvarez with rape? That person was seeking a position in the Administration. Did you know that, yes or no?

MR. LOZANO: No.

MR. CRITCHLEY: Did you ever see the memo -- the e-mail that was generated by Raj Parikh, dated December 3, 2017?

MR. LOZANO: I am unaware of any sort of memo.

MR. CRITCHLEY: Okay. Did anyone ask Mr. Parikh to reduce whatever advice he was giving, advice of Counsel, to some sort of writing so everybody could have a clear understanding as to what they could do or could not do regarding this issue?

MR. LOZANO: I'm unaware of that, but I would defer that question to Mr. Parikh.

MR. CRITCHLEY: You are not aware of it. Did anybody ask for any written advice?

MR. LOZANO: I did not ask for it.

MR. CRITCHLEY: Okay.

We have been provided some documents by Mr. Porrino. And I am now referring to a document that has been identified as -- the last

three digits 378, 379. And just so you understand what I'm referring to, this was identified as a candidate questionnaire; and it was a questionnaire for Cabinet-level positions. And there's a list of 24 questions. And No. 20 on the questions of potential Cabinet officers is a question, "Have you ever been arrested, charged with a crime, or indicted? If so, please describe."

Now, you're involved in the vetting of candidates for Cabinet positions, correct?

MR. LOZANO: Cabinet, yes.

MR. CRITCHLEY: Do you know why this question was put forth regarding potential members of the Cabinet?

MR. LOZANO: By the members of the Cabinet?

MR. CRITCHLEY: Yes, to potential members of the Cabinet. This was-- As it says, a candidate questionnaire. And the question that was asked of these people who were seeking a position in the Cabinet was, "Have you been arrested, charged with a crime, or indicted? If so, please describe."

Why was that question, in your mind, important to be asked of potential Cabinet members?

MR. LOZANO: That form is produced -- is something that is produced by the Attorney General's Office and the State Police.

MR. CRITCHLEY: Do you have any understanding as to why that type of question is asked?

MR. LOZANO: Well, I'm assuming there's a really good reason for it. I would defer to them.

MR. CRITCHLEY: You don't know. Do you know if a similar question was asked of Mr. Alvarez -- has he ever been charged with a crime?



MR. LOZANO: I don't recall the specifics of the actual questionnaire that they must fill out prior to their background check.

MR. CRITCHLEY: Forget the questionnaire. Did anybody orally ask him questions about him being charged with a crime?

MR. LOZANO: I did not ask him.

MR. CRITCHLEY: Because he was charged, so we understand, with aggravated sexual assault. I don't-- Did you know that?

MR. LOZANO: No, I was not aware of that.

MR. CRITCHLEY: You subsequently became aware in December that he was charged with sexual assault, whether it was aggravated sexual assault or rape. You knew that he was charged with the crime of sexual violence. Did you know that?

MR. MARINO: Mr. Critchley, are you referring to -- with respect to this scenario?

MR. CRITCHLEY: Yes.

MR. MARINO: So he was charged by Ms. Brennan?

MR. CRITCHLEY: Right.

MR. MARINO: Okay.

MR. LOZANO: What's the question? Am I aware that Ms. Brennan *charged* him?

MR. CRITCHLEY: Yes.

MR. LOZANO: I'm aware that--

MR. CRITCHLEY: With a crime.

MR. LOZANO: I knew what Mr. Braz had told Mr. Parikh and Mr. Cammarano was that Mr. Alvarez was accused of sexual assault; and

that he may be arrested any day now by a Prosecutor's Office. I did not know--

MR. CRITCHLEY: But no one--

MR. LOZANO: --I mean, I would safely assume that the charges were sexual assault; but I did not know anything beyond that.

MR. CRITCHLEY: But no one ever wanted to ask Mr. Alvarez to describe what he was charged with?

MR. LOZANO: I defer to Counsel on that. And it was advised that -- not to ask him any questions.

MR. CRITCHLEY: Well, the advice that you were given, was it orally or was it in writing?

MR. LOZANO: Oral.

MR. CRITCHLEY: And when were you given this advice?

MR. LOZANO: Sometime during the Transition.

MR. CRITCHLEY: As best you can recall, what advice were you given?

MR. LOZANO: To the best of my knowledge, the advice I was given was not to ask Al of the accusation.

MR. CRITCHLEY: Did they say -- the advice was, "Don't ask Al about the investigation"?

MR. LOZANO: I defer that question to Mr. Parikh, because he was leading the process.

MR. CRITCHLEY: I'm asking what you heard. Did he tell you -- you, "Don't ask Al Alvarez about this matter"?

MR. LOZANO: Yes.

MR. CRITCHLEY: He used those words?

MR. LOZANO: From what I can recall from over a year ago, yes.

MR. CRITCHLEY: Do you know -- you've been asked before -- that we're talking about confidentiality? But that requirement does not apply to someone who has a legitimate need to know about some wrongdoing. Would you agree with that or not agree with that?

MR. LOZANO: I agree.

MR. CRITCHLEY: Do you agree that the Governor had a legitimate need to know that Al Alvarez was charged with aggravated sexual assault by someone?

MR. MARINO: Can I just ask one clarifying question, Mr. Critchely?

MR. CRITCHLEY: Sure.

MR. MARINO: When you say -- you make reference to the need to know, like there's a compelling need to know that overrides confidentiality. Are you asking him -- it was just unclear to me -- are you asking him if that makes sense, or are you asking him if that was the law as he understood it?

MR. CRITCHLEY: Yes; did you understand that the Governor had a legitimate need to know about these charges?

MR. LOZANO: From the legal perspective?

MR. CRITCHLEY: Yes.

MR. LOZANO: No, I was not aware of that.

MR. CRITCHLEY: How about a commonsense perspective?

MR. LOZANO: From a commonsense perspective, yes.

MR. CRITCHLEY: Anybody exercise common sense during that period of time and say, "My common sense tells me to tell the Governor"? And if not, why not?

MR. LOZANO: Again, this was second-hand information that was brought forward to the Transition with no information or details of the case. It's the responsibility of the staff to actually try to get as much information as you possible can without having to necessarily go to the principal.

MR. CRITCHLEY: Who's the staff in this case?

MR. LOZANO: The staff at the time was the individuals who Mr. Braz went to, which were Pete Cammarano and Mr. Parikh.

MR. CRITCHLEY: And who?

MR. LOZANO: Mr. Parikh.

MR. CRITCHLEY: And what about Mr. Platkin?

MR. LOZANO: I never had the conversation-- Again, the information was brought to me. Mr. Braz did not come to me; the accuser did not come to me. So it was information -- I was on the receiving end, not on the dishing out end.

MR. CRITCHLEY: Okay; I have nothing further.

SENATOR WEINBERG: Thank you very much, Mr. Lozano. You are free to go.

MR. LOZANO: Thank you.

MR. MARINO: Thank you.

SENATOR WEINBERG: And now, thank you for your patience. It's been a long day. Ms. Lizette Delgado-Polanco, if you would join us up here, please.

Thank you. Would you just state your name and introduce the two people with you?

**LIZETTE DELGADO - POLANCO:** Sure.

My name is Lizette Delgado-Polanco; I am the current CEO of the Schools Development Authority.

And with me are my attorneys.

**WILLIAM F. MADERER, Esq.:** William Maderer and Jennifer O'Connor, of the Saiber law firm.

Good afternoon.

**SENATOR WEINBERG:** Good-- Well, probably it's time to say "good evening."

Go ahead.

**MS. WOZUNK:** Ms. Polanco, your testimony is being recorded that it may be transcribed for the Committee and it may be used in other proceedings. Do you understand that?

**MS. DELGADO-POLANCO:** Yes, I do.

**MS. WOZUNK:** Please know all of your responses should be verbal; we cannot record a head shake or a nod. If you do not understand a question, please ask for clarification. Otherwise, the Committee will assume that you understand the question, and that your answers are responsive to that question.

Do you understand those directions?

**MS. DELGADO-POLANCO:** Yes, I do.

**MS. WOZUNK:** Do you understand that if the statements you make today are willfully false, if you fail to answer a pertinent question or commit perjury, you may be subject to penalties under the law?

MS. DELGADO-POLANCO: Yes, I do.

MS. WOZUNK: Do you understand that you have certain rights under the Code of Fair Procedure, including the right to have your Counsel submit proposed questions on your behalf?

MS. DELGADO-POLANCO: Yes.

MS. WOZUNK: Does your Counsel have any questions to submit today?

MR. MADERER: We do not.

MS. WOZUNK: You are entitled to a copy of the transcript of your testimony, at your expense, when such copy is available.

Do you understand that?

MS. DELGADO-POLANCO: Yes.

MS. WOZUNK: You have the right to file a brief, sworn statement relevant to your testimony, for the record, at the conclusion of your appearance today.

Do you understand that?

MS. DELGADO-POLANCO: Yes.

MS. WOZUNK: Before the Committee proceeds with the oath, do you have any questions?

MS. DELGADO-POLANCO: No, I do not.

SENATOR WEINBERG: Thank you, and would you please stand and raise your right hand.

(Senator Weinberg administers oath)

Thank you; and again, thank you for your patience of waiting us out so we could get this far today.

MS. DELGADO-POLANCO: No problem.

SENATOR WEINBERG: Could you start out, please, by telling us your job title, your job responsibilities, and when you assumed that role?

MS. DELGADO-POLANCO: Sure.

I am the CEO, the Chief Executive Officer at the Schools Development Authority. I assumed this role August 1, 2018, and it is my responsibility to oversee the day-to-day operations from all of the personnel, all of our projects that we have out -- over, probably \$8 billion in projects that we have building schools across the State of New Jersey. We have an oversight of all the employees at the Authority.

SENATOR WEINBERG: Was Mr. Alvarez, then, already an employee as Chief of Staff when you came in as Executive Director?

MS. DELGADO-POLANCO: Yes, he was.

SENATOR WEINBERG: Okay. Did you get any information from anyone in Administration that Mr. Alvarez was removed from hiring responsibility, or that there were any accusations about Mr. Alvarez?

MS. DELGADO-POLANCO: No, I did not.

SENATOR WEINBERG: When did you first gain knowledge, then, of this accusation?

MS. DELGADO-POLANCO: I first gained knowledge on October 2, when Mr. Alvarez came into my office and asked if he could speak to me.

SENATOR WEINBERG: So nobody informed you in March of 2018 that the Chief of Staff had called in Mr. Alvarez and told him it was time to separate himself?

MS. DELGADO-POLANCO: No. I actually wasn't in government then; I was in private-- I was at the Carpenter's union.

SENATOR WEINBERG: Okay; but when you assumed your role, nobody told you--

MS. DELGADO-POLANCO: No.

SENATOR WEINBERG: --that he had been-- Okay.

And then we fast-forward to June of 2018, approximately two months before you assumed your responsibility there. Did anybody from the Administration call you or tell you in any way, shape, or form, or give you a personnel file, or anything else that said that Al Alvarez had been asked to separate, resign from State employment?

MS. DELGADO-POLANCO: No; the only conversation I had with reference to Al was during the interview with Pete Cammarano for the position,- which happened in July. I asked if Al was interested in the position -- I didn't want to have any conflict -- and he said that he was leaving.

SENATOR WEINBERG: You mean you asked if Mr. Alvarez was interested in the position--

MS. DELGADO-POLANCO: Right.

SENATOR WEINBERG: --that you were going to assume.

MS. DELGADO-POLANCO: The position that I was interviewing for. What my words were, "Is Al going to be okay with me coming in and interviewing for CEO?" "Yes, it doesn't matter; he's leaving."

SENATOR WEINBERG: So that was in July of 2018.

MS. DELGADO-POLANCO: When I interviewed, yes.



SENATOR WEINBERG: Approximately four months after Mr. Cammarano had asked him, according to his testimony, to leave. And approximately a month-and-a-half or two months after he was told by Mr. Platkin to leave.

MS. DELGADO-POLANCO: Yes.

SENATOR WEINBERG: I'm just trying--

MS. DELGADO-POLANCO: It was mid-July when I went in for my interview; yes.

SENATOR WEINBERG: I'm sorry?

MS. DELGADO-POLANCO: It was mid-July when I went in for the interview with Pete Cammarano for the position.

SENATOR WEINBERG: That was in July.

MS. DELGADO-POLANCO: Yes.

SENATOR WEINBERG: Okay. So although you didn't know, I'm just pointing out for the record -- July came three months -- March, April, May, June, July -- about three-and-a-half months after Mr. Cammarano told him he was to leave. He was still employed, but they told you he was leaving.

July came a month after June, when a discussion was held, according to testimony, between the Campaign attorney and Mr. Platkin, at which it was agreed that Mr. Alvarez would leave employment. Then we move to July and you are told that he is leaving. Did they give you any kind of a date or any further information about the fact that he was leaving?

MS. DELGADO-POLANCO: No. Actually he did not give me any further information. Mr. Alvarez did, once I started the position.

SENATOR WEINBERG: Did Mr. Alvarez, then, have a discussion with you about some timetable for his departure?

MS. DELGADO-POLANCO: Yes.

SENATOR WEINBERG: And can you tell us about that conversation?

MS. DELGADO-POLANCO: Yes. On the second day-- Actually my first day-- I was approved on August 1 by the Board; I spent some time with Mr. McKenna, and then the next day was my full first day of work.

One of the first few folks that I sat down with was with Al, just to go through what had happened the previous months before I got there. And I asked him, you know, when was he leaving. And he said that he would help me through the Transition; but that the end of October was the latest he can leave; that he had to leave by the end of October.

SENATOR WEINBERG: So he told you he had to leave by the end of October?

MS. DELGADO-POLANCO: Yes.

SENATOR WEINBERG: Did he give you a reason for why he had to leave by the end of October?

MS. DELGADO-POLANCO: He told me it was quality of life issues, that the commute was killing him, that he needed to spend more time with his family, and that he had a better job offer up in Bergen County where he's from. He had several job offers from Bergen County that he was considering, where he's from, and it was a shorter commute.

SENATOR WEINBERG: But he led you to believe that, in his mind, the outside date was the end of October.

MS. DELGADO-POLANCO: He said the last day that he could stay onboard would be the end of October.

SENATOR WEINBERG: Okay.

So at the time that you assumed your responsibilities, Mr. Alvarez was earning \$140,000 a year, which was somewhat comparable to other Chiefs of Staff. Is that correct?

MS. DELGADO-POLANCO: That is correct.

SENATOR WEINBERG: Okay. Come August, I think -- if I remember this correctly; correct me if I'm wrong -- Mr. Alvarez, who was planning to leave by the end of October -- he had already been told, unbeknownst to you, by two of his superiors that he should leave -- he received a \$30,000-a-year raise. I think it was in August of 2018; I'm not sure I have that date correct.

MS. DELGADO-POLANCO: That is correct. But it wasn't a raise for Al. We restructured, at the SDA, under my leadership. What we did was -- when I walked into the SDA, when I assumed responsibility, Al had very little responsibility under him. And what I did was restructure, and streamline, and made the workload-- We have 200 -- right now, we're at 230-something employees, and there are a lot of divisions within the SDA. And so I felt like there wasn't-- There was an Executive Vice President who had the bulk of the workload, and we needed to spread it out amongst the four Vice Presidents who were there, and the Chief of Staff also. In addition to helping and in being the second person in command to oversee, should have taken, also, divisions that I put under him.

So when I walked in there he had, pretty much, maybe two, four people who he oversaw directly who reported directly to him, in

addition to being the Chief of Staff. I created -- not created, I moved seven divisions and put a lot of employees under his responsibility. And it wasn't for Al; it was in anticipation for the new Chief of Staff who I would have to hire. I was looking for a person who I knew that I had to pay higher, because I know what the rates are in the outside. So it wasn't for Al; I knew Al was leaving. It was really to lure a better candidate for the position; a qualified candidate for a position that would come in and help me lead this agency.

SENATOR WEINBERG: And if I may, who-- You have a Chief of Staff now, I assume?

MS. DELGADO-POLANCO: I do.

SENATOR WEINBERG: And who is that person?

MS. DELGADO-POLANCO: My new Chief of Staff is Roy Garcia, who is a former Vice President at SEIU -- the Service Employees International Union -- 1199. He had been there for 15 years, and has a master's degree in Public Administration, and has an incredible amount of management background.

SENATOR WEINBERG: And I assume he came in at the higher salary.

MS. DELGADO-POLANCO: He did come in at the higher salary.

SENATOR WEINBERG: Okay.

So you knew that Al was leaving in August. So the raise didn't -- wasn't for him; he just profited by it.

MS. DELGADO-POLANCO: Yes; he just happened to be there. And quite honestly, he was not the only one -- his position was not

the only one that received it. The \$170,000 was to be comparable with the Vice Presidents who were being compensated and who technically answered to him also. So it was--

SENATOR WEINBERG: The Vice Presidents -- there are--

MS. DELGADO-POLANCO: We have four Vice Presidents at the SDA, and a Chief Operating Officer.

SENATOR WEINBERG: Okay; and the four Vice Presidents -- it's kind of an odd title--

MS. DELGADO-POLANCO: Because we're a corporation.

SENATOR WEINBERG: Right.

MS. DELGADO-POLANCO: We're called a *Schools Development Authority*, but we're run as a corporation. And so each Vice President has a different division that they oversee. So that's where the Vice President of Construction, the Vice President of everything that has to do with accounting and overseeing money, and the Vice President of Real Estate and Management all make the same amount, \$170,000; and Operations as well.

SENATOR WEINBERG: Okay.

When you came in as Executive Director, newly appointed, did you review the personnel files of any of the top staffers at the Schools Development Authority?

MS. DELGADO-POLANCO: I did a thorough review of all the employees as part of the restructuring. It was the only way for me to understand how to restructure and align the Authority in a way where it would be more functional. And I did not-- There was only one Vice

President who left, who had a very small portfolio under him, and he was replaced with a Vice President of Operations.

SENATOR WEINBERG: So you reviewed everybody's personnel file?

MS. DELGADO-POLANCO: I did; not their personnel file, but their portfolio and their responsibilities.

SENATOR WEINBERG: Well, when I say *review the personnel file*, I meant whatever applications for employment were; I'm only talking about the top-level staff.

MS. DELGADO-POLANCO: Okay.

SENATOR WEINBERG: Whatever applications for employment were on file, if there were any problems with employment, or anything like that. You didn't go into any of the personnel files.

MS. DELGADO-POLANCO: I did not go into their personnel files. I had about a 45-minute conversation with Charlie on his way-- The day that I was confirmed by the Board; he kind of gave me the background of each one of the Vice Presidents. I had no reason to go in there and terminate any of them, because they were actually doing a good job; you know, the senior staff there, including Al. So I didn't go into their personnel file because I had no reason to do that. There wasn't an allegation of poor job performance. What I did was review their responsibilities and their divisions.

SENATOR WEINBERG: Did Mr. McKenna tell you, on his way out, "By the way, I got a call from the Chief Counsel or the Chief of Staff telling me there is some problem with Mr. Alvarez, and he should be leaving"?

MS. DELGADO-POLANCO: He did not

SENATOR WEINBERG: Okay.

I am sure you walked into a situation, it would seem, that was already problem-ridden; and nobody had a conversation with you that would indicate that you had an employee in a top-level position who was asked to leave by-- This is not an accusation, by the way; I'm just clarifying.

MS. DELGADO-POLANCO: I understand.

SENATOR WEINBERG: Maybe my passionate feelings about it are coming through. But that you had an employee who had a very serious accusation against him, who had been, somehow, told to separate from his employment by the two top people in the Administration -- the Chief of Staff and the Chief Counsel, as well as your predecessor -- and nobody transferred that information to you.

MS. DELGADO-POLANCO: No; I was only told that he was leaving, first by Mr. Cammarano and then by Mr. Alvarez -- only to let me know that I had to start my search for the new Chief of Staff sooner because he had a deadline.

SENATOR WEINBERG: Okay. And when Mr. Cammarano told you he was leaving, he didn't give you a deadline for it, though.

MS. DELGADO-POLANCO: No, he did not.

SENATOR WEINBERG: Okay; no further questions.

Thank you.

ASSEMBLYWOMAN PINTOR MARIN: Hi; good evening.

MS. DELGADO-POLANCO: Hi.

ASSEMBLYWOMAN PINTOR MARIN: How are you?

Just a couple of follow-up questions from the Senator.

When you spoke to the Chief of Staff, Pete Cammarano, and said, you know, “Just so that you know, Al is going to be leaving,” did you ask him why he was leaving?

MS. DELGADO-POLANCO: No; I asked him why he wasn’t -- I asked him was I going to have an issue. I actually prompted the question. I said, “Am I going to have an issue with Al being there? Maybe he thinks he should get this position.” And he said, “No, he’s leaving.”

ASSEMBLYWOMAN PINTOR MARIN: But he didn’t give you any reason why, nor did you ask--

MS. DELGADO-POLANCO: I actually--

ASSEMBLYWOMAN PINTOR MARIN: --upon you asking whether, “there was a problem with me coming in,” you didn’t ask if there was any other reasons why.

MS. DELGADO-POLANCO: No, not at all. I had no reason. He said he was leaving; he was going back to Bergen County.

ASSEMBLYWOMAN PINTOR MARIN: And once he told you that, were you surprised?

MS. DELGADO-POLANCO: Not really; I mean, it happens that people get tired of the commute back and forth. He does live all the way up in Bergen County.

ASSEMBLYWOMAN PINTOR MARIN: During your working relationship with him, you didn’t see any problems? You didn’t sense anything was going wrong; nothing?

MS. DELGADO-POLANCO: Actually, if I must say, he was actually a really good employee. He was great during the Transition. He



really helped me understand a lot of the things that were at the Authority. I really didn't have any complaints with regard to this job performance, or any complaints that I knew of with him or any of the other employees here.

ASSEMBLYWOMAN PINTOR MARIN: Okay.

MS. DELGADO-POLANCO: I had nothing; I was-- If anything, he was very well liked at the SDA.

ASSEMBLYWOMAN PINTOR MARIN: Okay.

And Ms. Delgado-Polanco -- I am used to calling you *Lizette* -- when Al walked into your office the day that he had the conversation that he was leaving, I'm sure-- Was it an abrupt conversation? How did this happen?

MS. DELGADO-POLANCO: I was in my office. It was mid-morning; I don't recall what time it was. And he said, "Can I -- I need to talk to you; do you have a little bit of time?" I was, like, "Yes, sure; come in." He closed the door; he said, "I need to talk to you, and this is very serious." And I was, like, "Okay." And he said to me that he had been contacted by the *Wall Street Journal*, and that they were going to write a story about that he had allegedly raped someone on the Campaign. And, I mean, I've worked with Al on different occasions, so this is so out of character I felt like somebody threw a glass of cold water in my face, because I couldn't believe it was coming out of his mouth. And he said to me that they're going to write this story, and that they're alleging that he raped this woman who he had had -- this is what he said to me -- a consensual relationship with. She was married, and now she's claiming rape. And I, like, couldn't believe what he was saying to me, and I said to him -- I was like, "Oh, my God." I said, "What do you mean?" And he

said, "Don't worry; I'm not going to drag the Authority through this. Here's my--" he went into this jacket; he goes, "Here's my-- I'm not going to embarrass you or the Authority, here's my letter of resignation. I am resigning as of today."

And I couldn't believe, you know, what he was saying. Again, it was a pretty big shock. I had to, you know, take a minute or two to compose myself, because I just couldn't believe that that was happening.

ASSEMBLYWOMAN PINTOR MARIN: Now, before I ask the next question, I just want to go back one. When he said that he was leaving the end of October, did he give you a reason why?

MS. DELGADO-POLANCO: He did. He said the commute was a lot for him--

ASSEMBLYWOMAN PINTOR MARIN: Okay.

MS. DELGADO-POLANCO: --and, you know, the quality of family time issues. You, know, he has two sons who are teenagers, and he needed to spend time with them.

ASSEMBLYWOMAN PINTOR MARIN: But that was it; that was--

MS. DELGADO-POLANCO: That was it; that was the only thing. And I can relate; I'm a mom, I have kids. I've been known to walk away from jobs for quality of life issues.

ASSEMBLYWOMAN PINTOR MARIN: Okay.

So then, going back that day he was in your office, and then he just walked out; he left.

MS. DELGADO-POLANCO: No, no; he did not. I said to him, I said -- when he handed me the letter of resignation, I opened it up; it

was very brief; it just said, "I resign as of October 2." I said, "Okay. We have to tell the senior staff first. Should I call a -- I would like to call a meeting of all of them" -- I have a conference room right next to -- "immediately. They're all here." And he said, "No, can I please talk to them on an individual basis. I want to tell them myself."

ASSEMBLYWOMAN PINTOR MARIN: Okay; and then you allowed that.

MS. DELGADO-POLANCO: I did, because immediately he-- I said, "Okay, fine. And then we'll send out an e-mail letting them know that your last day at the SDA, at the end of the day, will be today."

But he wanted to personally talk to each individual Vice President and let them know that he was leaving.

ASSEMBLYWOMAN PINTOR MARIN: And then did you contact the Chief of Staff, at that point, from the Governor's Office?

MS. DELGADO-POLANCO: I called -- I made two phone calls. I called Adam Sternbach, who is our Governor's Counsel in the Governor's Office; and he called me back. He didn't answer right away; he called me back. And I also called Pete Cammarano immediately to let him know that this was happening. And I told him that I had a letter of resignation. He asked me to have it faxed over immediately. I spoke to Pete before I spoke to Adam; he asked me to have it faxed over immediately. And I asked him how do you want me to handle any press inquiries that come in, because I, you know--

ASSEMBLYWOMAN PINTOR MARIN: You were just told.

MS. DELGADO-POLANCO: I was just told about this, so I'm trying to wrap my head around what was going on. He said, "Anything that

comes in from the press, refer them to the Governor's Office." Then I spoke to Adam Sternbach, who is our Governor's Counsel. I explained to him what had happened, what Al had told me, and he asked me to fax over the letter as well. We did that; and that was it.

And then what I did was immediately call my Chief Operating Officer, Andrew Yosha, and informed him of what was going on internally. And then the next person I called was our Communications Director to let him know about what was going on. We were all, like, you know, trying to figure out-- And to let our Communications Director know that if anybody called, or any media outlet or anything, we were to refer it to the Governor's Office.

ASSEMBLYWOMAN PINTOR MARIN: At any point during the conversation with the Chief of Staff, Pete Cammarano, did he, at that point, tell you anything else?

MS. DELGADO-POLANCO: He didn't tell me anything. He just asked me -- he said, "Can you please do me a favor? Fax over the letter," and then I asked Pete, "How do you want me to handle any press or any inquiries?" He said, "Please refer them to the Governor's Office," and that was it. We only had, like, very-- I said, "Okay, I guess I'll talk to you--" But this was all in a matter of, like, less than a half-hour. It was so fast.

ASSEMBLYWOMAN PINTOR MARIN: So nothing else? He didn't disclose--

MS. DELGADO-POLANCO: Nothing else.

ASSEMBLYWOMAN PINTOR MARIN: --to you any other information?

MS. DELGADO-POLANCO: No, he didn't go into details; no.

ASSEMBLYWOMAN PINTOR MARIN: So then when the *Wall Street Journal* story hit, obviously you, at that point, became aware of certain situations that were going on previously to you coming in to play.

MS. DELGADO-POLANCO: Yes; and I also, at that point, is when I find out who the accuser was. He never told me who the accuser was.

ASSEMBLYWOMAN PINTOR MARIN: *He* meaning who?

MS. DELGADO-POLANCO: Al; he never named his accuser.

ASSEMBLYWOMAN PINTOR MARIN: Al told you; okay.

MS. DELGADO-POLANCO: I didn't know all the details. All he gave me was a brief-- He did mention-- I'm sorry; I forgot to mention that he did say that it was investigated by the authorities -- he didn't say which authorities -- and they declined to press charges.

ASSEMBLYWOMAN PINTOR MARIN: Okay.

MS. DELGADO-POLANCO: So that was the only thing that he said.

ASSEMBLYWOMAN PINTOR MARIN: And that was the only thing.

And then, from that moment on, you haven't had contact with Mr. Alvarez.

MS. DELGADO-POLANCO: I have not.

ASSEMBLYWOMAN PINTOR MARIN: And did you know Ms. Brennan, or no?

MS. DELGADO-POLANCO: I did.

ASSEMBLYWOMAN PINTOR MARIN: So at no point did you tell Mr. Alvarez that he needed to resign. He is the one who told you, "I'm resigning."

MS. DELGADO-POLANCO: Absolutely. When he came in my office, he had the letter already typed up, and he had it in his jacket, and he handed it over. Actually, he had it folded and handed it over to me.

ASSEMBLYWOMAN PINTOR MARIN: I know that day was probably crazy.

MS. DELGADO-POLANCO: It was really crazy. (laughter)

ASSEMBLYWOMAN PINTOR MARIN: I can only imagine.

At any point, thereafter, did you ask the Chief of Staff, "Does the Governor know?" Or was that too late, because it had already come out?

MS. DELGADO-POLANCO: I never actually-- I didn't ask anything about the Governor, to be honest with you, because I was more concerned about the agency and to see if there was anything-- I wanted to make sure that there wasn't anything else going on. And our conversation -- I didn't speak to Pete after that; I spoke more to Adam on procedures, and then Heather, who eventually came over to talk to us.

ASSEMBLYWOMAN PINTOR MARIN: So I'm sure that once you read the story that was in *Wall Street Journal* -- and this is just me speculating -- I'm sure you were a little disappointed because someone could have given you a head's up so that you could have been a little bit more prepared for what was coming to you.

MS. DELGADO-POLANCO: It would have been nice; I would have appreciated it. But I did not know anything. I was pretty-- I did not know; it would have been really nice.

ASSEMBLYWOMAN PINTOR MARIN: It's come to the Committee's attention that Mr. Alvarez filed for unemployment, obviously; and he was denied. Are you aware of that?

MS. DELGADO-POLANCO: I was aware that he filed for unemployment, through my Human Resources Director; yes.

ASSEMBLYWOMAN PINTOR MARIN: And I think that there's an appeal going on, with regards to whether he resigned, he was told to leave, or what the procedure-- Are you aware of any of that, or no?

MS. DELGADO-POLANCO: No. The only thing they told me was that he had applied for unemployment, was denied, and was appealing it. That was it.

ASSEMBLYWOMAN PINTOR MARIN: Okay. And normally, is that normal procedure or protocol?

MS. DELGADO-POLANCO: Usually it's handled by the Human Resources Department and the Human Resources Director, yes.

ASSEMBLYWOMAN PINTOR MARIN: Okay; thank you very much. Thank you for waiting.

MS. DELGADO-POLANCO: You're welcome.

SENATOR WEINBERG: Any of the two Vice Chairs have-- Senator Corrado.

SENATOR CORRADO: Good evening.

MS. DELGADO-POLANCO: Good evening.

SENATOR CORRADO: So can you just tell me a little bit about your background? I know you were in the private sector before you went to work at SDA.

MS. DELGADO-POLANCO: So I was in the private sector. I am actually a former State official; I was Assistant Secretary of State under Governor McGreevey. And after that, I actually had a lobbying firm, D-Solutions, where I represented mostly contractors, and developers, and housing developing.

And then, after that, in 2008, I took a job with the Service Employees International Union as their Legislative Director, Local 32BJ; and a year later I became their State Counsel Director, which oversaw the legislative, political, and social agenda for over 40,000 members and seven locals in the State of New Jersey. I did that for about 10, 11 years, and then I went and I was hired as the Deputy Political Director for the Carpenters Union; and then I was promoted to Political Director for the Northeast Regional Council of Carpenters, overseeing five states and about 40,000 members as well.

SENATOR CORRADO: And how did you get the job for SDA? Did the Administration approach you that there was going to be a vacancy? Mr. McKenna had testified that he knew he would be leaving the Administration at some point.

MS. DELGADO-POLANCO: Yes; I actually had a conversation with Pete, and Pete had mentioned, if I was interested in interviewing for the position--

SENATOR CORRADO: And so you interviewed with him. Did you interview with anyone else?



MS. DELGADO-POLANCO: I did not.

SENATOR CORRADO: When you started at the SDA, you just testified that you reviewed everybody's -- their profiles and their job responsibilities. So how many employees were there when you started at SDA?

MS. DELGADO-POLANCO: When I started at the SDA we had 225 employees.

SENATOR CORRADO: Okay. And I believe you said there are 230?

MS. DELGADO-POLANCO: It's about 233 right now, yes.

SENATOR CORRADO: About 233 now.

You testified that you knew Mr. Alvarez before you started working with him. Can you tell us how you knew him?

MS. DELGADO-POLANCO: I knew Mr. Alvarez throughout the campaign world and the political world. I've always served as a senior advisor on a lot of the campaigns, and Mr. Alvarez -- either from Bergen County politics, and also he's worked on various campaigns as either a director, or a deputy director, and so forth. And so we've always known each other through political or any circles; but they're usually political circles, yes.

SENATOR CORRADO: Were you involved in Governor Murphy's Campaign?

MS. DELGADO-POLANCO: As working on the Campaign, no. But I am the Vice Chair of the New Jersey State Democratic Committee, so yes.

SENATOR CORRADO: Were you a part of the Transition?

MS. DELGADO-POLANCO: I served as the Co-Chair of the Labor Transition Team, yes.

SENATOR CORRADO: Do you know Ms. Brennan?

MS. DELGADO-POLANCO: I do know Ms. Brennan.

SENATOR CORRADO: How long have you known her?

MS. DELGADO-POLANCO: Well, I served on the Advisory Committee for the New Leaders Council, and that's how I met Ms. Brennan. And so I always helped them, from the time I was at Service Employees International Union -- I've always been a big supporter of the organization. So I was always, you know, fund-raising for them and helping them; and also I was one of their speakers, every year -- when they had their new classes come in, I always would go in and talk about Labor's role in the State of New Jersey.

SENATOR CORRADO: When you started at SDA, and Mr. Alvarez and you had the conversation; he said he was leaving for quality of life. Did he tell you what job he was going to?

MS. DELGADO-POLANCO: He did not. He said he had several options, but he didn't go into them.

SENATOR CORRADO: Did he, at any point, ever ask for your assistance in finding a job?

MS. DELGADO-POLANCO: Not at all.

SENATOR CORRADO: Are you familiar with the article that came out yesterday about Mr. Alvarez's deal with his unemployment insurance denial?

MS. DELGADO-POLANCO: Yes; I just saw that yesterday, yes.

SENATOR CORRADO: So in that article, it states -- and I can just read; I'm reading from the article, not from the actual form -- it says that, "On multiple occasions, I was told by my superiors at the New Jersey Governor's Office and the NJSDA that if I did not resign my position I would be fired from that position."

Did he ever say that to you?

MS. DELGADO-POLANCO: Not me; I don't think he was referring to me there.

SENATOR CORRADO: No, no.

And did you know Mr. McKenna before you sat down and met with him?

MS. DELGADO-POLANCO: I did not. I knew of him, but I didn't know him on a personal level, no.

SENATOR CORRADO: The article goes on to state that, "He was contacted by a reporter looking for a comment on the rape allegation. He said he ignored the query and attempted to contact the Governor's Office himself for guidance. They did not respond to him directly."

It says, "However, the CEO of the SDA" -- I believe he's referring to you -- "advised me that she had made contact with the Governor's Office and they were demanding that I resign immediately and provide the resignation letter to the Governor's Office, via fax, as proof."

So is that how it happened?

MS. DELGADO-POLANCO: No, that wasn't how it happened.

He actually came in to my office, told me that he was contacted by the *Wall Street Journal*, and he told me the whole story as I've testified to

it earlier. And he actually gave me a resignation letter. I did not even have to ask him. He said -- he assured me that he did not want to embarrass or drag the Authority through any of this whole entire thing; that he resigned to me.

SENATOR CORRADO: When he gave you the resignation letter, whose attention did you send it to at the Governor's Office?

MS. DELGADO-POLANCO: I sent it to two folks. One was Adam Sternbach, who is my Governor's Counsel who oversees our Authority; and the other was to the Chief of Staff's Office, Peter Cammarano.

SENATOR CORRADO: And I apologize if we're asking you the same questions; it's been a long day for us too.

MS. DELGADO-POLANCO: It's okay.

SENATOR CORRADO: When you spoke to Mr. Cammarano, Mr. Alvarez was still at the office. Did he ever tell you that he had told Mr. Alvarez to leave back in March of 2018?

MS. DELGADO-POLANCO: He did not.

SENATOR CORRADO: And at that time you did not know, I guess, either that they had also contacted him in June, and Mr. McKenna had told him to leave.

MS. DELGADO-POLANCO: I did not, and he did not mention it to me at all either.

SENATOR CORRADO: With the seriousness of the allegations, don't you think you should have been given a head's up?

MS. DELGADO-POLANCO: Like I said earlier, it would have been nice. I would have appreciated it.

SENATOR CORRADO: And I can understand that, and I appreciate that too.

At the time you streamlined, there were additional raises given out. Did you have the sole authority to give raises, or does it have to be approved by the Board?

MS. DELGADO-POLANCO: I do have the authority to give raises within the budget that was approved by the Board in January of that previous year. So when I restructured and moved the money around, I was able to do so, staying within the budget that I was allotted.

SENATOR CORRADO: Okay. And is there currently a whistleblower lawsuit against the SDA?

MS. DELGADO-POLANCO: There is a -- that I know of -- there is a complaint, an EEO complaint against the SDA, yes.

SENATOR CORRADO: Can you give me any information about that?

MS. DELGADO-POLANCO: I cannot; it's actually pending litigation and I can't really talk about it.

SENATOR CORRADO: That's all the questions I have; thank you.

Thank you.

MS. DELGADO-POLANCO: Thank you.

SENATOR WEINBERG: Senator Madden.

SENATOR MADDEN: Good evening, Lizette.

MS. DELGADO-POLANCO: Good evening.

SENATOR MADDEN: If I can just-- In your testimony, you said you really didn't apply for the position you have; you were approached

about your interest in the position. Could you share with us how that happened?

MS. DELGADO-POLANCO: I actually spoke to Pete on a regular basis, and he had mentioned that there was going to be an opening at the SDA; and it was something that I might be interested in and to interview for. So that's how it happened.

SENATOR MADDEN: And did you interview for the job?

MS. DELGADO-POLANCO: I did.

SENATOR MADDEN: And how were you told or advised that you actually were selected for the job, and were given your starting date, and what have you?

MS. DELGADO-POLANCO: I actually spoke to Pete-- I interviewed for the job, and then he called me, like, about a week later and told me that he felt that I was the right candidate for the position. He felt that it was great to have women lead the SDA, and my background and my experience would work. And my start date -- that I had to be approved by the Board at the next Board meeting, because it's the Board that actually hires me. And so he just told me what the process was and put me in contact with Mary Maples, who was the Governor's Chief Counsel overseeing Authorities.

SENATOR MADDEN: When Pete made that phone call to you saying you were the selection, when was that; what month?

MS. DELGADO-POLANCO: It was right after -- about a week, almost; probably mid-July, around there. I interviewed, and then it was probably like a week afterwards.

SENATOR MADDEN: Okay; thank you for your time.

MS. DELGADO-POLANCO: Thank you, Senator.

SENATOR WEINBERG: Assemblywoman Lampitt.

ASSEMBLYWOMAN LAMPITT: Thank you, and-- Yes, almost good evening, Lizette.

MS. DELGADO-POLANCO: I'm sorry. (laughter)

ASSEMBLYWOMAN LAMPITT: So you spoke, really briefly, about the fact that Mr. Alvarez was actually respected and well-liked at the SDA.

Knowing now the allegations and what had occurred, and knowing the fact that being a woman sometimes it's a challenge to come forward -- how brave Katie Brennan was to do what she's been doing, did you think, at any point in time, to do a climate survey of your staff to determine whether or not, truly, you know, was somebody affected by Mr. Alvarez during his employment?

MS. DELGADO-POLANCO: Actually, when the allegations arose and the story broke, we actually had a senior staff meeting. And I discussed with the Vice Presidents -- and including, at the time, the Acting Personnel Director -- we asked if there was anything, and had anybody come forward with any allegations or anything. And I-- Absolutely not.

ASSEMBLYWOMAN LAMPITT: Well, you know, coming forward is one thing; it's another thing when you are solicited, you know, your response. That's a climate survey; that actually takes the tenor and the tone of the organization to allow somebody the opportunity -- something that they might not have thought that they had an opportunity to do.

So at this point in time, you really don't know whether or not there were any situations, you know, within the SDA, with any of the employees, because you have not done a full vetting of all of the staff.

MS. DELGADO-POLANCO: That is actually not accurate. I actually hired an EEO, which we did not have. We have a Chief Diversity Officer, who's an employment attorney; she's also an internal affairs investigator, and we have let the staff know that if there is any issue -- and this is subsequent from me coming in as the CEO. She started in-- Actually, she started right before Al left. And she actually-- We let everyone know that she would be the conduit. If there are any concerns, if there is any type of harassment -- whether its sexual-- And that we have a zero-tolerance policy for any type of harassment in the workplace; and that she would be the conduit, and that we have her now assigned as the EEO Officer.

So no, we actually have a process in place and a person that, if there are any allegations, they can go to.

ASSEMBLYWOMAN LAMPITT: I appreciate the fact that you have somebody in place now; but you still have not fully vetted every single person to determine-- And whether or not they have the opportunity to feel that, silently, they can move forward without, sort of, the visual presence that they're walking into the EEO Officer's office, and to be stigmatized as such.

So I'll move on, actually.

During your hiring process, Lizette, you know, was a background check done on yourself?



MS. DELGADO-POLANCO: A background check is done on everyone at the SDA. There is a form that we have to sign off; and it's part of our employment package, and there is a background check that's done.

ASSEMBLYWOMAN LAMPITT: Do you know what level of a background check was done?

MS. DELGADO-POLANCO: I do not know what level, but I know there was a background check done.

ASSEMBLYWOMAN LAMPITT: So knowing the fact that Pete and others knew of Al Alvarez's situation, in July, during the interview process; and then hired you, you know, in August; and you not now knowing until October -- do you feel, you know, did you feel-- Now, did you feel at any point in time, that you could have been vulnerable; that you could have been compromised; that you, yourself, could have actually been in a situation; that others knew, potentially, that Al Alvarez, you know, was this individual --, has this claim against him? I mean, how did you feel as a woman that a man knew, and another manager with -- had a sexual assignation against him?

MS. DELGADO-POLANCO: Assemblywoman, as you know, I have spent my whole entire professional career fighting for women's rights, women's issues, the underprivileged, and the underserved; and I'm their representative in the State. Could I have used a head's up? Absolutely. Did I feel disappointed? Absolutely. But I can't change what they did. The only thing I can do is put the measures in place, as the new CEO, to ensure that no one ever has to endure that workplace -- at least the one I am in charge of.

ASSEMBLYWOMAN LAMPITT: Thank you, Lizette.

SENATOR WEINBERG: I would like to get some clarification on this; not right now, but if you get these documents straightened out.

I have a letter to our lawyers, dated January 3, I guess, from Mr. Porrino, where he says the documents designated -- and he gives the numbers -- of the results of a background check performed on Mr. Alvarez. This document is undated, and I am assuming that this is what -- okay. Just for the record, background -- there is something redacted up above -- I don't what it is -- but then it says *Background*. Public records: No criminal issues, no tax issues, no civil issues. And then it says *Negative News*, none.

And then negative social media: Facebook, none; LinkedIn, none; Instagram, none. And then it lists his political contributions.

So that is the background check that, I guess, was provided to us by Mr. Alvarez.

MR. CRITCHLEY: And for the record, that is G last three digits 450.

SENATOR WEINBERG: I'm sorry, Mr. Hayden?

MR. HAYDEN: That was from his file.

SENATOR WEINBERG: From his personnel file.

MR. HAYDEN: Yes, right; provided by the SDA.

SENATOR WEINBERG: Okay, all right.

Are there any further questions for Lizette?

Yes, go ahead.

ASSEMBLYWOMAN PINTOR MARIN: Just one clarification before, I think, Senator Oroho has a question.

Lizette, I just want to put, again, on the record. So at no point did Al ever tell you that someone gave him the deadline of the end of

October? He's the one who told you, "The latest that I have to leave is the end of October because of--"

MS. DELGADO-POLANCO: He said to me, "The latest I can stay -- I have -- I really want to go back to Bergen County, and I have several job offers." He didn't go into the job offers. I'm assuming that whoever offered him the job, or whatever job it was, that they wanted him on before the end of the year. That's what I assumed; I didn't ask.

ASSEMBLYWOMAN PINTOR MARIN: Okay.

MS. DELGADO-POLANCO: At this point, I was already moving on; and I had talked to several individuals about being the new Chief of Staff. So him staying was never an option.

ASSEMBLYWOMAN PINTOR MARIN: Okay; thank you.

SENATOR WEINBERG: You stated, Lizette, that you knew Katie Brennan, or you know Katie Brennan.

MS. DELGADO-POLANCO: I do, Senator.

SENATOR WEINBERG: How well do you know her? I mean, have you -- do you have a friendship with her, do you have shared social occasions, or--

MS. DELGADO-POLANCO: I know her from being on the Advisory Board of New Leaders Council. Not really friendship, because we have a difference in age. (laughter) But yes, it's not like--

SENATOR WEINBERG: That doesn't matter. You're not that far away from-- (laughter)

MS. DELGADO-POLANCO: Oh, I am; I'm in my 50s. But yes--

SENATOR WEINBERG: That was not a requested question, for the record. (laughter)

MS. DELGADO-POLANCO: Actually, I know her through New Leaders Council -- through fundraising and events; and also, you know, coming in as a panelist on stuff like that. She would always contact me to get help, if she needed, on either fund-raising or participation for New Leaders Council.

SENATOR WEINBERG: So did you always know her as a stable, honest--

MS. DELGADO-POLANCO: Yes, absolutely.

SENATOR WEINBERG: Okay. So you would have no-- As you said, you were very surprised to hear about the accusation from your knowledge of Mr. Alvarez. Would you be surprised to find out that Ms. Brennan might have made up this whole story?

MS. DELGADO-POLANCO: Honestly, I don't even know how to answer that, because I don't have any reason to believe one or-- Do you know what I mean? I don't think she would -- she doesn't come across as an unstable person like that; I can't say that. I've always had -- she's always been very professional with me and courteous. But I don't even -- I've never heard even allegations of her making up a story, so other than--

SENATOR WEINBERG: Well, I'm only answering what you--

MS. DELGADO-POLANCO: Oh, what Al alleged.

SENATOR WEINBERG: --I think what you said -- that Mr. Alvarez said that it was a consensual relationship.

MS. DELGADO-POLANCO: That's what he said to me.

SENATOR WEINBERG: Okay; all right.

Senator Oroho.

SENATOR OROHO: Thank you, Madam Chairwoman.

And actually, Senator Weinberg, you asked a little bit about the question I wanted to ask you about.

We have-- Ms. Brennan came before us; she called her husband right away, she contacted close personal friends right away. She contacted the Hudson County Prosecutor's Office, and she also contacted the -- I think it was Jersey City Medical Center, I believe. So she did all that; and then we have everybody's testimony that said they believe her.

And I just want to confirm that Mr. Alvarez said to you that it was consensual *relationship*. Was there any indication that -- how long this relationship had gone on? Because everybody believes her.

MS. DELGADO-POLANCO: He didn't specify. He just said that they were in a consensual relationship, and that she was married, and that she was accusing him of rape. Those were his words. He didn't talk about time frames.

SENATOR OROHO: Just to make sure I have the timeline right. And this is before your time at the SDA

On March 2018, I guess it was Mr. Cammarano who had told -- according to his testimony, had told Mr. Alvarez that he had to leave. Then in June 2018, it was your predecessor, Charlie McKenna, who had told Mr. Alvarez he has to leave.

You come in, August 8, I guess; is that correct?

MS. DELGADO-POLANCO: August 1.

SENATOR OROHO: August 1; okay. And then, on August 20, we had, obviously, the raise; and I guess, maybe, it was done according

to a “restructuring.” On August 20 we had a raise of \$30,000 that went to Mr. Alvarez. Is my timing correct?

MS. DELGADO-POLANCO: The time? Actually, yes. The first thing I did as I walked in was focus on the structure of the Authority in order to then-- So it wasn't -- like I testified before -- it wasn't for Mr. Alvarez; it was for the position of the Chief of Staff. And he was not the -- that position was not the only one that received a raise. The employees at the SDA, especially the executive staff, had not received a raise in over eight years.

SENATOR OROHO: So had you known, had you been given a head's up -- and you mentioned you would have liked to have a head's up -- if Mr. Alvarez was still in that position, and knowing that you had been given a head's up that he was supposed to leave, would you have given him a raise?

MS. DELGADO-POLANCO: Absolutely not; but that's not-- Absolutely not.

SENATOR OROHO: Understood.

MS. DELGADO-POLANCO: We probably wouldn't be having this conversation, because he wouldn't be there. I mean, I just-- That's not--

SENATOR OROHO: You mentioned a “restructuring” -- right? -- and the number of policies and procedures that are in place. Is there a nepotism policy at the SDA?

MS. DELGADO-POLANCO: Yes, there is.

SENATOR OROHO: Okay.

MS. DELGADO-POLANCO: It's under the State ethics nepotism policy, yes.

SENATOR OROHO: In these new hires, are any family members or relatives working at the SDA?

MS. DELGADO-POLANCO: There's one person who is a second cousin, and is in one of the divisions in Finance.

SENATOR OROHO: A second cousin. So if that-- Do you have to get a special approval; does somebody have to review in order to give you approval to make that hire?

MS. DELGADO-POLANCO: I actually ran it by Counsel; and I signed ethic disclosure forms on who the person was. And that person reports to the COO, Chief Operating Officer--

SENATOR OROHO: So they don't report to you.

MS. DELGADO-POLANCO: --they do not report to me.

SENATOR OROHO: Okay; thank you.

MS. DELGADO-POLANCO: You're welcome.

SENATOR WEINBERG: Mr. Critchley.

MR. CRITCHLEY: Good evening.

SENATOR WEINBERG: It's 6:01, by the way, in case you want to make-- Yes.

MS. DELGADO-POLANCO: Good evening.

MR. CRITCHLEY: It's 6:01; I'm from a good Labor background. We're going to file an unfair Labor charge. We're working too late. (laughter)

You just gave an answer to Senator Oroho, and I may have the-- He asked if you knew the allegations, would you have given him the

raise; and I thought you said, “We wouldn’t be having this conversation, because he wouldn’t be there.”

Did I repeat, in substance, what you said?

MS. DELGADO-POLANCO: Absolutely.

MR. CRITCHLEY: Why would he not be there if you knew about the allegations?

MS. DELGADO-POLANCO: If I knew about the allegations when I came in-- Everyone here knows me. I am a fierce advocate for women and women’s rights. And I know that everyone, you know, everyone has the right for justice. But honestly, I would not put the Authority in that position where I would have someone with that type of an allegation working for me. That would not happen.

MR. CRITCHLEY: So your advocacy on this very important position may have been compromised because you were not told about the “credible” allegation against Mr. Alvarez?

MS. DELGADO-POLANCO: I would feel that maybe it would be compromised-- I don’t think it’s compromised, because I had no knowledge of it; had I had knowledge of it and did nothing about it, then I feel that it would have then been compromised.

MR. CRITCHLEY: Okay. So then I guess that obviates me asking this next question, because I was going to ask, if you knew about it, what precautions would you have taken as a result of Mr. Alvarez’s still being there? And your position is “Well, Mr. Critchley, don’t ask me that question, because if I knew about it, he wouldn’t be there.”

MS. DELGADO-POLANCO: He would not be there, sir. He would have been one of the first people who would have to leave.



MR. CRITCHLEY: I guess if you were in the Governor's Office in December, we wouldn't be having this Committee hearing. (laughter)

SENATOR OROHO: The Governor would have known.

MS. DELGADO-POLANCO: Maybe.

MR. CRITCHLEY: Your Counsel was good enough to provide us the documentation. And one of the documents -- if you have it in front of you -- SDA, last two digits 38. And I'm going to ask you some questions about that; but I'll ask you some initial questions before I read from it.

Do you know why the SDA or the State denied Mr. Alvarez's application for unemployment compensation?

MS. DELGADO-POLANCO: I do not. This is the first I'm seeing these documents, frankly.

MR. CRITCHLEY: Okay. Then let me just bring your attention to -- and for the record I just indicated I'm referring to SDA-38 -- and I referred to some of this before with another witness. I'm referring to the section under the caption: Reason for Appeal. It purports to be Mr. Alvarez's basis for why he is appealing the denial. And he states -- if you can go down, please, to the bottom of the first paragraph, where it begins, "At this time in June."

I'm going to read that sentence.

"At this time in June I requested additional time and assistance in finding a new job before resigning. Both the Governor's Office and New Jersey Schools Development Authority agreed with this request."

Now, my question is, do you know of anyone offering -- do you know anyone from the Governor's Office offering to provide Mr. Alvarez assistance in getting a job before he agreed to resign?

MS. DELGADO-POLANCO: I do not, sir.

MR. CRITCHLEY: Do you know anybody from the New Jersey Schools Development Authority who agreed with his condition that before he resigned he wanted some assistance in finding a new job?

MS. DELGADO-POLANCO: I do not.

MR. CRITCHLEY: Now, the next paragraph -- I'm going to read it, please, because that has not been referred to. And I'll read it slow, "On October 2, 2018, a reporter contacted me looking for a comment on the above-referenced allegation. I ignored the query and attempted to contact the Governor's Office for guidance. They did not respond to me directly; however, the CEO of the Schools Development Authority advised me that she had made contact with the Governor's Office, and that they were demanding that I resign immediately and provide the resignation letter to the Governor's Office, via fax, as proof. At that moment, I felt that I had no choice but to resign or be terminated."

Now, I'm just going to read one sentence; because there appears to be a little bit of difference in terms of the sequencing of events between what Mr. Alvarez says in his appeal and the testimony regarding the resignation letter.

It says, "They did not respond to me directly; however, the CEO of the Schools Development Authority advised me that she had made contact with the Governor's Office, and that they were demanding that I resign immediately and provide the resignation letter to the Governor's Office."

Is that how you understood the conversation took place between you and Mr. Alvarez on October 2?

MS. DELGADO-POLANCO: No, sir; that's actually not accurate.

He actually came into my office, explained what had happened, and gave me a letter of resignation. And then he went on to talk to someone -- on his way back to talk to the Vice Presidents to let them know that he was leaving.

On his way back he said, "Did you reach anyone over at the Governor's Office?" I said, "Yes, I did, and I faxed your resignation letter over."

MR. CRITCHLEY: Got you. So at least at this allegation you would question the credibility of Mr. Alvarez regarding what he stated occurred between you and he on October 2 regarding the resignation letter.

MS. DELGADO-POLANCO: Absolutely, sir. That is not what happened.

MR. CRITCHLEY: Okay.

Now, it appears that, ironically if you look at SDA, last two digits 39, that there's a hearing date; and his appeal on the hearing date was yesterday. You have it? I'm looking -- SDA-0039. Do you have it, ma'am?

MS. DELGADO-POLANCO: Yes, I see it here.

MR. CRITCHLEY: You see the hearing date, January 7, 2019; hearing time, 9:30. Do you know what happened, if anything, at that hearing?

MS. DELGADO-POLANCO: I do not, sir,

MR. CRITCHLEY: Okay. And then if you go down a little bit it says, "Involved issues: voluntarily leaving; discharge for misconduct; gross misconduct."

Do you know if the reason why the SDA refused to allow Mr. Alvarez to collect unemployment was because they were -- the SDA was accusing him of "gross misconduct"?

MS. DELGADO-POLANCO: I did not fill out any paperwork saying that he had gross misconduct, no; or -- not to my knowledge -- no one in the Authority did.

MR. CRITCHLEY: We were trying to get it, and if you could -- if you could give us the entire file. What we have here is the appeal process and the papers; we don't have the initial application. If we could get the initial application, if you have that, that would be very helpful.

MS. DELGADO-POLANCO: Are you asking me for it, sir?

MR. CRITCHLEY: Well, obviously not now.

MS. DELGADO-POLANCO: I think this is the Department of Labor; this is all we have. We don't have anything else.

MR. CRITCHLEY: So you don't have anything; it's all the Department of Labor?

MS. DELGADO-POLANCO: No, this is-- What our attorneys have is what we have.

MR. CRITCHLEY: Okay.

When the raise was given in August of 2018, did the Governor's Office receive a head's up from you, that, "By the way, I'm giving a substantial increase to Al Alvarez?"

MS. DELGADO-POLANCO: Again, I did not give only a substantial increase to Al Alvarez. The Governor's Office did receive a head's up on the restructuring, and I did discuss the salaries of everyone across the board on the increases, based on percentages.

But no, not Al individually, because he was on his way out.

MR. CRITCHLEY: Okay. I understand that; I don't want you to -- I'm not making any accusation. My question is very specific, and you can say "yay" or "nay;" and I got that.

Did you discuss or give anybody in the Governor's Office a head's up that Mr. Alvarez was getting a \$30,000 raise?

MS. DELGADO-POLANCO: I did not.

MR. CRITCHLEY: Okay.

Now, one of the things that we have -- and you've heard that from people, Senators and Assembly people who have asked questions -- is that we have this slow pace, in terms of what's going on with Mr. Alvarez, regarding termination. We have him being told in March that he has to leave, and he's going to leave. And we go from March, to April, to May, at a slow pace; he's not leaving. And then we get to June; he's told he has to leave again. Slow pace, he's not leaving. He's going, he's going to go, but he's not going.

Now we get to October 2018; we get an inquiry from the *Wall Street Journal*, and in a matter of minutes he resigns. Did you find that a little unusual?

MS. DELGADO-POLANCO: I did not know about the previous conversations.

MR. CRITCHLEY: Okay.

MS. DELGADO-POLANCO: He resigned; he came to me and resigned, based on the inquiry that was coming in and the accusations and the story that was about to break in the *Wall Street Journal*.

MR. CRITCHLEY: Did he ever tell you, “Listen, I have not been credibly accused; and hell no, I’m not resigning.” Did he say that to you?

MS. DELGADO-POLANCO: I never asked him for a resignation.

MR. CRITCHLEY: Did he ever tell you, “I am not resigning”?

MS. DELGADO-POLANCO: No, sir.

MR. CRITCHLEY: That’s basically all I have.

Thank you very much.

MS. DELGADO-POLANCO: You’re welcome

SENATOR WEINBERG: Mr. Hayden.

MR. HAYDEN: There is a certain advantage to being the last witness. No questions. (laughter)

MR. MADERER: Thank you.

SENATOR WEINBERG: I’ll remember that in my future.

Rosemary.

MS. ALITO: I have just a couple of questions.

During the course of your testimony I believe you said, at one point, “I spoke with Heather, who then came over.” Those were my notes of it; I may not have gotten exactly right.

Who was the *Heather* who you referred to speaking to?

MS. DELGADO-POLANCO: She’s in charge, over at Governor’s Office, of Ethics.

MS. ALITO: All right; so that would be Heather Taylor?

MS. DELGADO-POLANCO: Yes, Heather Taylor.

MS. ALITO: And when was it that you spoke with Ms. Taylor about this issue?

MS. ALITO: She contacted our Chief Operating-- She contacted me, and also our Chief Operating Officer, probably within days of Al resigning.

MS. ALITO: After he resigned.

MS. DELGADO-POLANCO: Yes.

MS. ALITO: And you indicated that she, then, came over.

MS. DELGADO-POLANCO: Over to our office.

MS. ALITO: Yes; and what did she do when she came over?

MS. DELGADO-POLANCO: She sat down and asked us to go over, you know, what happened when he came into the office and resigned. I told her what happened; and then she wanted to understand the issue of the raises.

MS. ALITO: Okay. And you say *we*; who met with Ms. Taylor? Was it--

MS. DELGADO-POLANCO: Myself and the Chief Operating Officer, Andrew Yosha.

MS. ALITO: Okay. And can you tell me, to the best that you can recall, what Ms. Taylor said, and what you and your Chief Operating Officer said during this conversation?

MS. DELGADO-POLANCO: She asked about the process of the resignation; of what -- the conversation that I had with Al when he came in to resign. And also she asked for the employment -- the copy of the file, which we provided all Counsel with those. And then we talked about the raise and the raises across the board. We gave her the organization

chart that -- when I walked in, the organization chart as it was restructured, with also the salary sheets for every single person who received a raise at the SDA.

MS. ALITO: And the file that you provided to Ms. Taylor is the same file that Counsel has provided to the Committee?

MS. DELGADO-POLANCO: I'm assuming so; we only had one file.

MS. ALITO: Okay.

Now, since you have become the CEO, have you changed the hiring protocol?

MS. DELGADO-POLANCO: There's always been a hiring protocol in place at the SDA. We either hire from within-- When I became CEO, I actually wanted to promote from within, and also make it equitable for women. When I got there, there was a big disparity in salaries for men and women; and the equal pay for equal work was certainly not working there. And so one of the things I did was also promote women to higher positions who had been there, and were just as qualified as their male counterparts; make their salaries equitable. So we did a lot of promoting from within. And if there's a position open -- I also sat down with all four Vice Presidents to go over all their divisions, to take their recommendations to see what personnel they needed; and then so we can advertise either on our website or however the process Human Resources does.

MS. ALITO: During the course of the hiring, are background checks performed?



MS. DELGADO-POLANCO: As part of the onboarding employment package, there is a background check document that we have to sign that says that you have to have a background check performed, yes.

MS. ALITO: And so, for example, for the hiring of Mr. Alvarez's replacement, from 1199, a background check was performed on that individual?

MS. DELGADO-POLANCO: Yes, ma'am.

MS. ALITO: And does your hiring protocol include, at any point, an inquiry of the applicant about whether they have ever had charges lodged against them for sexual harassment or sexual-related offenses?

MS. DELGADO-POLANCO: I'm assuming that that comes up as part of the background check -- if there's any -- if they are a registered sex offender or something like that. But I have-- If you're asking me if that's part of the inquiry, I have no idea. We have an independent company that performs those background checks.

MS. ALITO: But aside from the background check -- which would not pick up things like the allegations against Mr. Alvarez -- have you added to your hiring protocol, or does your hiring protocol include an inquiry of the applicant that would ask whether any such charges have been lodged against him or her?

MS. DELGADO-POLANCO: I have not; but we have-- Again, our form is a standard form that they've had at the Authority when I came there. It's a form that the applicant has to consent to going through a background check, which includes, I'm assuming, verification of criminal and other acts. So no, if there's one that's specifically sexual misconduct, no; if that's what you're asking, we don't have that.

MS. ALITO: Well, just to make sure we're on the same wavelength, I understand from your testimony that a background check is performed consistent with what the protocol was previously. Now you've indicated that you would have, if you knew about Mr. Alvarez's allegations against him, you would have terminated his employment. I'm asking whether the current hiring protocols include any questions or procedures that would uncover allegations such as those against Mr. Alvarez that do not appear in a criminal background check.

MS. DELGADO-POLANCO: I do not know.

MS. ALITO: Thank you; nothing further.

MS. DELGADO-POLANCO: You're welcome.

SENATOR WEINBERG: Okay, Ms. Delgado-Polanco, thank you very much.

MS. DELGADO-POLANCO: Thank you, Senator

SENATOR WEINBERG: You're dismissed.

We will reconvene -- I'm sure you're all looking forward to it -- on Thursday, January 10, at 10:30. We will continue with the testimony from Pete Cammarano. We can then call Mr. Garg back, if anybody has any further questions of him; and we expect Heather Taylor here, who could not -- lucky her -- could not be here today.

So again, thank you; thank you for your patience and waiting so long.

MS. DELGADO-POLANCO: Thank you.

MR. MADERER: And thank you for accommodating us.

MS. DELGADO-POLANCO: Thank you

**(MEETING CONCLUDED)**